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No. 694

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

HUNT OIL COMPANY
and
BODCAW COMPANY,
(Formerly Nebo Oil Company, Inc.)
Petitioners

versus

MARATHON OIL COMPANY,
(Formerly The Ohio Oil Company), ET AL.
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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The petitioners, Hunt Oil Company and Bodcaw Company, respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit dated August 13, 1963, and entered on September 23, 1963, upon denial of rehearing on that date.

OPINIONS BELOW

The opinion and final-judgment of the district court is reported in 205 F. Supp. 885, and is printed in Appen-

dix, page 19, infra. The opinion of the Court of Appeals for the Fifth Circuit is reported in 321 F. 2d 702, and is printed in Appendix, page 34, infra.

JURISDICTION

The decision of the Court of Appeals for the Fifth Circuit was dated August 13, 1963. Timely petition for rehearing was denied on September 23, 1963, (Appendix, page 41, infra.) and judgment was entered on September 23, 1963. The jurisdiction of this court is invoked under 28 U. S. C. Sec. 1254 (1).

QUESTIONS PRESENTED

This case arises under a contract which unitized and pooled oil, gas and other hydrocarbons, as then discovered and known, and as thereafter discovered, in the Cotton Valley Field, Webster Parish, Louisiana. The issue is whether or not a reservoir of gas and hydrocarbons later discovered in the area and at a depth covered by the unitization and pooling, is to be included under the contract. The Contract clearly and explicitly provides for such inclusion of the additional reservoir under the contract. The District Court found, however, that to include the additional reservoir under the contract would be unreasonable and "would accomplish an unreasonable and inequitable result". And interpreted and applied the contract according to its consideration of the "circumstances in the light of which the parties negotiated and executed the agreement", and its findings in respect to interpretation by the

parties. The Fifth Circuit Court of Appeals affirmed the decision of the District Court.

Subsequent to the decision of the District Court but prior to the decision of the Fifth Circuit Court of Appeals, the Court of Appeals of Louisiana for the Third Circuit, in *Texaco, Inc. v. Vermilion Parish School Board*, 145 So 2nd 383, (Appendix, page 43, infra.) and the Supreme Court of Louisiana, on certiorari in the same case, *Texaco, Inc. v. Vermilion Parish School Board* 152 So 2nd 541, 244 La. 408 (Appendix, page 66, infra,) have interpreted and applied a contract unitizing and pooling oil, gas and other hydrocarbons then discovered and known, and as thereafter discovered, in the Erath Field, Vermilion Parish, Louisiana, on the question and issue of whether or not the contract applied to a later discovered reservoir. This Erath Contract, and the question of its application to a later discovered reservoir, are substantially the same as in the present case. Both Louisiana Courts, applying Louisiana statutory law and jurisrupdence as cited, ascertained the intent of the parties to the contract and held the additional reservoir to be included under the contract. In its decision, the Supreme Court of Louisiana declared that the parties to the Erath Field Unitization Contract "*. . . did not, and could not have contemplated independent units within a unitized area such as the Erath Field. To interpret the agreement as providing that production should be attributed to anything other than the whole would lead to absurd and inequitable consequences never intended.*"

The decision of the Fifth Circuit Court of Appeals has departed from the clear and explicit words of the con-

tract because it finds that to apply them and include the later discovered reservoir in the field unitization contract "would accomplish an unreasonable and inequitable result." It is the law of Louisiana, as pronounced by its highest court, that *not* to include such a later discovered reservoir in a field unitization contract "would lead to absurd and inequitable consequences never intended."

The decisions of both Louisiana Courts in *Texaco, Inc. v. Vermilion Parish School Board* (supra) were urged on the Fifth Circuit Court of Appeals. The judgment of the Fifth Circuit Court of Appeals does not consider, or make any mention, of these Louisiana decisions and the law of Louisiana evidenced thereby.

The questions presented for review are:

(1) Is the law of Louisiana, as pronounced in *Texaco, Inc. v. Vermilion Parish School Board* (supra) applicable to the present case?

(2) If the law of Louisiana as pronounced in *Texaco, Inc. v. Vermilion Parish School Board* (supra) is applicable to the present case, is the decision of the Fifth Circuit Court of Appeals herein in conflict therewith?

STATUTES INVOLVED

Article 1901 of the Louisiana Civil Code, Volume 7, page 6, of West's Louisiana Civil Code:

"Agreements legally entered into have the effect of laws on those who have formed them.

"They can not be revoked, unless my mutual consent of the parties, or for causes acknowledged by law.

"They must be performed with good faith."

Article 1945 of the Louisiana Civil Code, Volume 7, page 330, of West's Louisiana Civil Code:

"Legal agreements having the effects of law upon the parties, none but the parties can abrogate or modify them. Upon this principle are established the following rules:

"First—That no general or special legislative act can be so construed as to avoid or modify a legal contract previously made;

"Second—That courts are bound to give legal effect to all such contracts according to the true intent of all the parties;

"Third—That the intent is to be determined by the words of the contract, when these are clear and explicit and lead to no absurd consequences;

"Fourth—That it is the common intent of the parties—that is, the intention of all—that is to be sought for; if there was a difference in this intent, there was no common consent and, consequently, no contract."

Article 1956 of the Louisiana Civil Code, Volume 7, page 403, of West's Louisiana Civil Code:

"When the intent of the parties is doubtful, the construction put upon it, by the manner in which it has been executed by both, or by one with the express or implied assent of the other, furnishes a rule for its interpretation."

STATEMENT OF THE CASE

Litigants are parties to a contract effective June 29, 1940, which unitized, pooled and communized within a "'D' Sand Participating Area" and a "Bodcaw Sand Participating Area" all oil, gas and other hydrocarbons separately as to each such participating area; and provided for the creation, within the Cotton Valley Field, under the circumstances therein described, of "Other Participating Areas"; provided for the determination of the fractional part of the total production of oil, gas and other hydrocarbons from each participating area which was to be allocated to each party to the agreement; made provision for the enlargement, under the circumstances and limitations therein described, in the Cotton Valley Field, of the Bodcaw Sand Participating Area and the "D" Sand Participating Area; made provisions for the installation and operation of a recycling pressure maintenance and liquid hydrocarbon extraction and processing plant; made provision for the return to the reservoir or recycling of part or all of the gas to be produced from the various participating areas, and for sharing among operators of the expense of oil and gas production operations in the participating areas. This contract is printed in the appendix hereof commencing at page 84.

At the time the contract was negotiated and executed, two principal reservoirs of gas and hydrocarbons had already been discovered. One such reservoir was in a formation known as the "D" Sand and the surface area overlying this reservoir was designated as the "D" Sand

Participating Area." The other reservoir was in another formation known as the Bodcaw Sand and the surface area overlying this reservoir was designated as the "Bodcaw Sand Participating Area". These two participating areas coincided except that the "Bodcaw Sand Participating Area", in some instances, extended slightly beyond the limits of the "'D' Sand Participating Area."

The Bodcaw Sand and the "D" Sand are geological formations, or strata, with ascertainable geological positions, and characteristics. Both extend over a wide geographical area but bear oil, gas or hydrocarbons only where some feature or quality of the formation has caused an accumulation, or reservoir, of oil, gas or hydrocarbons.

After the contract was executed, the Bodcaw Sand reservoir was found to extend, as a continuous reservoir, for a considerable distance to the north of the boundary of the "Bodcaw Sand Participating Area" as originally established under the contract and, under the enlargement provisions of the contract, the "Bodcaw Sand Participating Area," and the Cotton Valley Field, were enlarged to include this extension of the Bodcaw Sand productivity.

The "D" Sand reservoir, however, did not enjoy the extension this found for the Bodcaw Sand reservoir, and remained substantially as outlined at the time the contract was executed. In 1953, however, the drilling of additional wells in the area to which the "Bodcaw Sand Participating Area" had been extended discovered an additional reservoir of gas and hydrocarbons in the same "D" Sand formation but not inter-connected with the original "D" Sand

reservoir. This additional "D" Sand reservoir is in the geographical area included in the contractual unitization and pooling and is in the geological and depth specifications for unitization and pooling under the contract. It produces gas and hydrocarbons at a gas-oil ratio in excess of ten thousand cubic feet of gas to each barrel of liquid hydrocarbons and requires repressuring by recycling of gas, with extraction of liquids, for economic and efficient recovery of the liquid hydrocarbons contained in the reservoir.

Article IV of the contract between the parties (Appendix, page 84) provides for wells drilled or to be drilled in the Cotton Valley Field to the Bodcaw Sand or the "D" Sand but outside the "Bodcaw Sand Participating Area" and the "'D' Sand Participating Area", respectively, in the following words:

> "Whenever such well or wells produce with the gas a mixture of liquid hydrocarbons at a gas-oil ratio in excess of ten thousand cubic feet of gas to each barrel of said liquid hydrocarbons, or if other wells are completed in the Bodcaw Sand or the 'D' Sand in the Cotton Valley Field, but outside of the Bodcaw Sand Participating Area and the 'D' Sand Participating Area, respectively, and produce with the gas a mixture of liquid hydrocarbons at a gas-oil ratio in excess of ten thousand cubic feet of gas to each barrel of said liquid hydrocarbons, then each such well, as to the particular sand from which it is producing and the production acreage allocated to such sand, shall without further formality come under the terms of this agreement and the production therefrom shall be unitized, and said Production

"Unit, with an appropriate acreage factor hereinafter determined, shall be pooled and communized with the production and acreage in such participating area as of the first day of the calendar month succeeding the happening of such event, and thereafter the production from such well and Production Unit shall be handled in the same manner as all other participating acreage within the particular participating area. . . ."
(Appendix, page 92)

The issue of this case is whether or not the production from the wells drilled to this additional "D" Sand reservoir, and producing at a gas-oil ratio in excess of ten thousand cubic feet of gas to each barrel of liquid hydrocarbons, is to be included in the pooling and unitization provided in the contract. This issue turns on whether or not the application of the words of the contract requiring the unitization of the later discovered additional reservoirs leads to absurd consequences. The decision of the Fifth Circuit Court of Appeals holds that it does. The questions presented by this petition for review is whether or not this holding is in conflict with the applicable law of the State of Louisiana.

The amount claimed in this suit is largely in excess of $10,000. The basis for federal jurisdiction in the court of first instance is 28 U.S.C. Sec. 1332.

REASONS RELIED ON FOR ALLOWANCE OF WRIT

Under Articles 1901 and 1945 of the Louisiana Civil Code, "agreements legally entered into have the effect of laws on those who have formed them" with the courts

being "bound to give legal effect to all such contracts according to the true intent of the parties" which intent "is to be determined by the words of the contract, when these are clear and explicit and lead to no absurd consequences." In this case the contract contemplates that other wells may be drilled to the "D" Sand outside the "'D' Sand Participating area" and clearly and explicity provides that if any such wells produce with the gas a mixture of liquid hydrocarbons at a gas-oil ratio in excess of ten thousand cubic feet of gas to each barrel of liquid hydrocarbons, then each such well, as to the particular sand from which it is producing, and the production acreage allotted to such sand, shall without further formality come under the terms of the agreement and the production therefrom shall be unitized. The production involved in this suit is from wells completed in the "D" Sand in the Cotton Valley Field, but outside the "'D' Sand Participating Area" and producing with the gas a mixture of liquid hydrocarbons at a gas-oil ratio in excess of ten thousand cubic feet of gas to each barrel of liquid hydrocarbons. The contract clearly and explicitly provides and directs that each such well, as to the particular sand from which it is producing, and the production acreage allotted such sand, is, without further formality, to come under the contract and be unitized according to the contract.

The words of this contract are patently clear and explicit and have not in any respect been found doubtful or ambiguous. The courts are bound to give legal effect to these clear and explicit words of the contract *unless* such effect leads to absurd consequences. Article 1945 of

Louisiana Civil Code). The decision of the Fifth Circuit Court of Appeals, in adopting and affirming the District Court, has found that to include the later discovered reservoir, and the production therefrom, under the contract would accomplish an unreasonable and inequitable result. Upon this finding the decision departs from the clear and explicit words of the contract and interprets and construes it according to the Court's consideration of the "circumstances in light of which the parties negotiated and executed the agreement," and matters dehors the contract itself which the Court considered as evidencing interpretation by the parties, all resulting in the Court constructing a contract which is entirely different from the clear and explicit words the parties themselves used in making their contract.

Under Louisiana Civil Code Article 1945 the only ground that can justify this decision's departure from the clear and explicit words of the contract is that these clear and explicit words lead to absurd consequences. If they do not lead to absurd consequences, then the clear and explicit words must prevail over any circumstance of negotiation and execution and matters considered as interpretations by the parties. (Article 1901, 1945 and 1956, Louisiana Civil Code).

The issue of the case, therefore, turns on whether or not the inclusion of a later discovered additional reservoir in a field unitization contract is an absurd or unreasonable consequence following from the clear and explicit words of the contract. The decision of the Fifth Circuit Court of Appeals holds that it is. Petitioners respectfully

submit that this decision is contrary to the law of the State of Louisiana as pronounced and established in decisions on exactly the same question raised under a field unitization contract of the same nature and purpose as the contract involved here.

These Louisiana decisions are *Texaco, Inc., v. Vermilion Parish School Board*, 145 So. 2nd 383 (Appendix, page 43 infra), decided by the Court of Appeal of Louisiana for the Third Circuit, and *Texaco, Inc. v. Vermilion Parish School Board*, 152 So. 2nd 541, 244 La. 408, (Appendix page 66; infra) the same case decided on certiorari by the Supreme Court of Louisiana. This Louisiana case involved a contract unitizing and pooling oil, gas and other minerals in the Erath Field, Vermilion Parish, Louisiana, as discovered at the time the contract was executed and as might be thereafter discovered. A number of years after the contract was executed, an additional reservoir was discovered in a sand or formation that had provided a separate original reservoir. The issue of the Louisiana case was precisely the issue presented in this case. Both Louisiana courts held that the additional reservoir was included in the field unitization contract.

In its decision, after citing Louisiana Civil Code Article 1945 and the jurisprudence thereunder, the Louisiana Supreme Court declared:

> ". . . To interpret the agreements as providing that production should be attributed to anything other than the whole would lead to absurd and inequitable consequences never intended."

Thus the decision of the Fifth Circuit Court of Appeals herein holds that to include a later discovered addi-

tional reservoir in a field unitization contract "would accomplish an unreasonable and inequitable result," while the Supreme Court of Louisiana had held that *not* to include such a later discovered reservoir in a field unitization contract "would lead to absurd and inequitable consequences never intended." The decision of the Fifth Circuit Court of Appeals is squarely and completely in conflict with the law of Louisiana as declared by the Louisiana Supreme Court on the only issue in this case which could justify the departure in the decision of the Fifth Circuit Court of Appeals from the clear and explicit words of the contract.

The Fifth Circuit Court of Appeals should apply the decision of the Louisiana Supreme Court even though that decision was rendered while this case was on appeal from the District Court to the Fifth Circuit Court of Appeals. *Huddleston v. Dwyer* 61 S. Ct. 1015, 322 U.S. 232, 88 L. Ed. 1246; *Vandenbark v. Owens-Illinois Glass Co.*, 61 Ct. 347, 311 U.S. 538, 85 L. Ed. 327. The decisions of the Louisiana Courts were urged upon the Fifth Circuit Court of Appeals but the decision makes no mention of them.

Field unitization of oil, gas and other hydrocarbons permits repressuring and extraction of liquids not otherwise recoverable. Such contracts and the operations thereunder are of great importance to the conservation of valuable natural resources and the economy of the petroleum industry and require huge investments for plants and facilities. The State of Louisiana is a major petroleum producing area of the nation and the application and enforceability of such contracts in respect to additional res-

ervoirs later discovered in a unitized area are important questions upon which there should be no conflict between the state law and a holding of a Court of the United States.

CONCLUSION

For the reasons set out, it is respectfully submitted that the decision of the Fifth Circuit Court of Appeals is in conflict with the applicable law of the State of Louisiana, and a Writ of Certiorari should be granted.

Respectfully submitted,

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Shreveport, Louisiana.

Attorneys for Petitioners, Hunt Oil Co. and Bodcaw Company (formerly Nebo Oil Co., Inc.)

PROOF OF SERVICE

I, MARLIN RISINGER, JR., one of the attorneys of record for Hunt Oil Company and Bodcaw Company, petitioners herein, depose and say that on the 18 day of December, 1963, I served copies of the foregoing Petition to the Supreme Court of the United States for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, with Appendices thereto, on the several parties as follows:

1. On Marathon Oil Company and The Pardee Company, by mailing a copy of said document in duly addressed envelopes with air mail postage prepaid, to each of their following attorneys of record residing more than 500 miles from Shreveport, Louisiana, namely:

Clayton L. Orn
539 South Main Street
Findlay, Ohio

Calvin A. Brown
539 South Main Street
Findlay, Ohio

Joseph F. Driver
539 South Main Street
Findlay, Ohio

and by mailing a copy of said document in duly addressed envelopes, with first class postage prepaid, to each of their remaining attorneys of record and who reside less than 500 miles from Shreveport, Louisiana, namely:

Arthur O'Quin
Fifth Floor
First National Bank Building
Shreveport, Louisiana

C. Ford Currier
Fifth Floor
First National Bank Building
Shreveport, Louisiana

2. On A. J. Hodges Industries, Inc., General American Oil Company of Texas, Mrs. Tom J. Moffett, Mrs. Betty M. Harvin, Individually, and as Natural Tutrix, by mailing a copy of said document in duly addressed envelopes with first class postage prepaid to each of their attorneys of record, namely:

David E. Smitherman
717 Commercial National Bank Building
Shreveport, Louisiana

Stuart D. Lunn
717 Commercial National Bank Building
Shreveport, Louisiana

3. On M. H. Marr, R. A. Briston, and Marion Jean Bristol Wakefield, by mailing a copy of said document in a duly addressed envelope with first class postage prepaid, to their attorney of record, namely:

Sumter Cousin
P. O. Box 1467
Shreveport, Louisiana

4. On Magnolia Petroleum Company by mailing a copy of said document in a duly addressed envelope with

first class postage prepaid, to their attorney of record, namely:

A. Dixon Carroll
P. O. Box 1726
Giddens-Lane Building
Shreveport, Louisiana

5. On William H. Cook, Fred Simon, Mrs. Louis Weiss Bronner, Mrs. Barbara Ann Weiss Simon, and Mrs. Natalie H. Weiss, by mailing a copy of said document in duly addressed envelopes with first class postage prepaid to their attorneys of record, namely:

William H. Cook
P. O. Box 646
Shreveport, Louisiana

Robert McL. Jeter
P. O. Box 646
Shreveport, Louisiana

6. On F. Brown and P. G. Le Gendre by mailing a copy of said document in a duly addressed envelope with first class postage prepaid, to their attorneys of record, namely:

J. C. Smith
Commercial National Bank Building
Shreveport, Louisiana

7. On Mrs. Marie Amiss Smith and Marilyn E. Watkins, by mailing a copy of said document in a duly

addressed envelope with first class postage prepaid, to their attorney of record, namely:

James C. Cowles
P. O. Box 1135
Shreveport, Louisiana

This affidavit and proof of service is made pursuant to United States Supreme Court Rule 33.

Marlin Risinger, Jr.

Subscribed and sworn to before me at Shreveport, Louisiana, on this 18 day of December, 1963.

Notary Public, Caddo Parish, Louisiana

HUNT OIL COMPANY, Plaintiff,

v.

The OHIO OIL COMPANY, Defendant and Third-Party Plaintiff

v.

A. J. HODGES INDUSTRIES, INC., et al., Third-Party Defendants;

The Pardee Company, Intervener.

Civ. A. No. 6506

United States District Court
W. D. Louisiana,
Shreveport Division

June 6, 1962.

BEN C. DAWKINS, JR., CHIEF JUDGE.

This cause duly came on for trial on the pleadings and the Order for Separate Trial of Claims under Rule 42(b) of the Federal Rules of Civil Procedure, 28 U.S.C.A. entered by the Court herein on April 24, 1959, and the Court; having heard the evidence and considered the stipulation of the parties, and having considered carefully the extensive briefs and oral arguments, finds the facts and states its conclusions of law as follows:

Findings of Fact

1. Plaintiff Hunt Oil Company is a corporation of the State of Delaware with its principal office at Dallas, Texas; Defendant The Ohio Oil Company is a corporation of the State of Ohio with its principal office at Findlay, Ohio; Nebo Oil Company, Inc. (now by change of name Bodcaw Company), Third-Party Defendant and Counter-Claimant, is a corporation of the State of Delaware with

its principal office in Dallas, Texas; A. J. Hodges Industries, Inc., Third-Party Defendant, is a corporation of the State of Louisiana with its principal office in the City of Shreveport, Louisiana, within the Western District of Louisiana, and in 1960 conveyed its properties in the Cotton Valley Field hereinafter referred to to General American Oil Company of Texas, a Delaware corporation with its principal office in Dallas, Texas, which by order of April 13, 1960, was made party to this action as a Third-Party Defendant; Socony Mobil Oil Company, Inc., Third-Party Defendant successor to Magnolia Petroleum Company, a Texas corporation with its principal office in Dallas, Texas, is a corporation of the State of New York with its principal office in the City of New York; Midstates Oil Corporation, Third-Party Defendant, is a corporation of the State of Delaware with its principal office in Tulsa, Oklahoma; Third-Party Defendants M. H. Marr, R. A. Bristol, Marion Jean Bristol Wakefield, Mrs. Marie Amiss Smith and Marilyn E. Watkins are citizens and residents of the State of Texas; and Third-Party Defendttns F. H. Brown, Mrs. Betty M. Harvin, the minors Elizabeth L. Gustine, Margaret M. Gustine, Marilyn M. Gustine and David D. Gustine, for all of whom Mrs. Betty M. Harvin is tutrix, P. G. LeGendre, Mrs. Tom Jones Moffitt, Mrs. Helen M. Asher, Moses Ascher, Sam Sklar, William H. Cook, Fred Simon, Mrs. Louise Weiss Bronner, Mrs. Barbara Ann Weiss Simon, Mrs. Natalie H. Weiss and R. M. Wilson are citizens and residents of the State of Louisiana, residing within the Western District of Louisiana; Intervener The Pardee Company is a corporation of the State of New York with its principal office in Philadelphia, Pennsylvania. The amount claimed by Plaintiff of Defendant in this action is largely in excess of $10,000.

This action presents a controversy between Plaintiff and Counter-Claimant, both of which are citizens of

Delaware and Texas, on the one hand, and Defendant, a citizen of Ohio, and Intervenor, a citizen of New York and Pennsylvania, on the other; and ancillary thereto, a demand by Defendant against Third-Party Defendants for indemnity in the event it is cast in this action.

2. Plaintiff, Defendant, all Third-Party Defendants and Intervener have executed or ratified, and are parties to, the "Cotton Valley Unitization and Pressure Maintenance Agreement" (herein referred to as the "Agreement"), made part by reference of Plaintiff's complaint herein, which became effective June 29, 1940. A copy of the "Agreement" is attached hereto as an "Appendix A." Plaintiff, Defendant and all Third-Party Defendants are parties to the Agreement as "Operator" and Intervener is a party to the Agreement as "Royalty Owner"; see definitions, "Agreement", p. 2, (Ex. 1 to Stipulation of Fact, attached hereto as "Appendix B".

3. (a) By the Agreement the parties thereto, including the parties to this action, unitized, pooled and communized (Article I), within a "D" Sand Participating Area" definitions, p. 2), and a "Bodcaw Sand Participating Area" (Definitions, p. 2), all oil, gas and other hydrocarbons separately as to each such Participating Area; and provided for the creation, within the Cotton Valley Field, under the circumstances therein described of "Other Participating Areas" (Article III and Definitions, p. 2);

(b) provided for the determination of the fractional part of the total production of oil, gas and other hydrocarbons from each Participating Area which was to be allocated to each party to the Agreement (Article II);

(c) made provision for the enlargement under the circumstances and limitations therein described, in the

Cotton Valley Field, of the Bodcaw Sand Participating Area and the "D" Sand Participating Area (Article IV);(1)

(d) made provision for the installation and operation of a recycling, pressure maintenance and liquid hydrocarbon extraction and processing plant for the return to the reservoir or recycling of some or all of the gas to be produced from the various Participating Areas, and for the sharing among Operators of the expense of oil and gas production operations in the Participating Areas, all of which operations were provided to be directed and supervised by an Operators' Committee upon which each Operator was represented; and

(e) made various stipulations in aid of and incidental to the provisions above summarized.

4. Plaintiff, Hunt Oil Company, and Third-Party Defendant and Cross-Complainant Bodcaw Company (formerly Nebo Oil Company) are owners, as Operator under the Agreement, of certain participating percentages in the "D" Sand Participating Area and the Bodcaw Sand Participating Area, by virtue of which they are entitled to certain percentages of the value of all oil, gas and other hydrocarbons produced from the "D" Sand Participating Area. By right of such ownership, they claim in this action from Defendant, The Ohio Oil Company, fractional parts of the value of oil and gas produced since February 1, 1957 by Defendant from two wells known as CVOC-Ohio-Hodges No. 2 Well in NW¼ of NW¼, Section 36, Township 22 North, Range 10 West, and the Ohio-W. T. Gleason Well No. 1-D in NW¼ of SE¼, Section 31, Township 22 North, Range 9 West, Webster Parish Lou-

(1) It is argued by Defendant that the enlargement provisions of the Agreement have been superseded by the Louisiana Commissioner of Conservation's Order No. 10-C, 87 *(Exhibit 7 to Stipulation of Fact)*; but the Court deems it unnecessary to pass on this argument.

isiana. The Court finds that the said Gleason and Hodges Wells are completed in, and that the Hodges Well (the Gleason Well having been converted into an injection well shortly after its completion) has produced oil and gas from, a separate pool or reservoir known as the North "D" Sand Pool which is located within the geographical confines of the Bodcaw Sand Participating Area and to the North of the "D" Sand Participating Area, such production being from a sand or formation known as the "D" Sand, which is found in the same stratigraphic interval as the "D" Sand of the "D" Sand Participating Area, but the pool or reservoir known as the North "D" Sand Pool being completely separated from the "D" Sand reservoir included in the "D" Sand Participating Area by an impermeable barrier or shale and siltstone over a mile wide, and that Defendant has, since February 1, 1957, produced oil and gas from the North "D" Sand Pool. The Court further finds that the Defendant and certain of the Third-Party Defendants have admitted that the North "D" Sand Pool has been considered by them to be within the definition of "Cotton Valley Field" as set forth in the Agreement (Definitions, p. 1).

(1) 5. The parties to the Agreement did not by the provisions thereof, and particularly by Article IV thereof, provide for enlargement of the "D" Sand Participating Area so as to include the whole or any part of an oil, gas or hydrocarbon pool or reservoir, in the stratigraphic interval of the Cotton Valley Field known as the "D" Sand, separate from and not connected with the pool or reservoir included in the "D" Sand Participating Area as originally established by the Agreement. No part of the North "D" Sand Pool, from which Defendant, by means of the Hodges Well referred to in Finding 4 (2), produced oil and gas since February 1, 1957, is a part of the "D" Sand Participating Area under the Agreement.

6. Finding 5 above, is based upon the Court's determination that:

(a). When the circumstances in the light of which the parties negotiated and executed the Agreement are considered, the meaning of Finding 5. of Article IV of the Agreement becomes clear. In 1939 and 1940, at the time the Agreement was drawn up and entered into, the parties by whom it was drafted and executed considered and believed that they possessed virtually complete scientific information concerning the nature, thickness, areal extent total gas and oil reserves, reservoir characteristics and reservoir behavior of two hydrocarbon reservoirs then producing in the Cotton Valley Field, these reservoirs being the Bodcaw Sand reservoir and the "D" Sand reservoir, in each of which both gas and oil wells had been completed and were then producing. This scientific information possessed by the parties was based on data from approximately one hundred wells which had been drilled to said two reservoirs, or to one or the other of them, said wells having been drilled at surface locations widely spread over the entirety of what was then considered the productive area of each reservoir, and was further derived from numerous analyses of cores taken from said wells, production tests run in said wells, electric logs of said wells, other characteristics of said wells, and also from the operation of a pilot plant which the parties, prior to entering into the Agreement, had constructed and operated for the purpose of determining with accuracy the feasibility, from the standpoints of both engineering and economics, of cycling said "D" Sand reservoir and maintaining pressure therein, and of cycling said Bodcaw Sand reservoir and maintaining pressure therein. Thus, at the time the contract was negotiated and executed, the parties thought they knew, within very close limitations, the areal extent of the "D" Sand reservoir and the Bodcaw Sand reservoir and they knew that each included

additional acreage along the edge of each Participating Area as established by the Agreement which was not included in the Participating Areas but on which were producing oil wells; and they thought that there might be, additionally, minor extensions of the productive part of each of those reservoirs which might later be discovered by drilling. They knew that the owners of the oil wells around the edges of the two principal Participating Areas had a much more profitable operation than the owners of the gas wells on acreage included within those Participating Areas, and they knew that sooner or later, as production progressed, the oil wells would become gas wells (that is, would produce gas at a ratio of 10,000 cubic feet of gas or more per barrel of oil). They knew it was necessary to provide for control of the gas produced by these rim oil wells and by other wells subsequently drilled to the same reservoirs and for their integration into the Bodcaw Sand Participating Area and the "D" Sand Participating Area, respectively, when they should become gas wells. The known facts supported their belief that, with minor exceptions they considered immaterial, their contract was to operate upon one hydrocarbon reservoir in the "D" Sand and one reservoir in the Bodcaw Sand, both of which were considered to be known and substantially delimited, and upon deeper and then unknown or untested reservoirs (Restatement, "Contracts," §§ 230, 235, 236; Williston, "Contracts," Rev. Ed., Vol. 3, §§ 618, 619, 620; In re Tidewater Coal Exchange, 292 F. 22; Adeline Sugar Factory Co. vs. Evangeline Oil Co. (1908), 121 La. 961, 46 So. 935; Andrews Coal Co. vs. School Board (1922), 151 La. 695, 92 So. 303; Mixon vs. St. Paul Fire & Marine Ins. Co. (1920), 147 La. 302, 84 So. 790).

(b) The principal purposes of the parties in entering into the Agreement, as the Court finds from the provisions of the Agreement and from the circumstances in the view of the parties at the time it was negotiated and

executed, were, to the degree practically attainable, to provide for unitization separately of the Bodcaw Sand Participating Area and of the "D" Sand Participating Area and to accomplish maintenance of pressures in the Bodcaw Sand and "D" Sand reservoirs included in the two Participating Areas respectively. Unitization would be of economic benefit to the Operators by minimizing the drilling of unnecessary wells in such Participating Areas and pressure maintenance would be of economic benefit both to Operators and Royalty Owners by increasing the total hydrocarbons which would be produced during the life of the field from the Bodcaw Sand Participating Area and the "D" Sand Participating Area. The parties had knowledge, at the time the Agreement was negotiated and executed, that in a conventional production operation (that is, without pressure maintenance) pressures in each reservoir would decline as production proceeded and that when this decline in pressure reached, in each reservoir, a certain critical point some or all of the gaseous hydrocarbons in that particular reservoir would condense and adhere to the sand grains, thus losing mobility, so that they would never be produced. The pressure maintenance contemplated by the Agreement was to consist of bringing the gas from each reservoir to the surface, stripping it of readily condensible hydrocarbons by means of extraction plant and pumping the stripped gas back into the reservoir (that is, "cycling" or as it is sometimes called "recycling"); by this operation pressure decline in the reservoir would be postponed and, additionally, the mixture of hydrocarbons in the reservoir, at the places occupied by the stripped gas, would contain less readily condensible materials. In a gas-bearing reservoir, pressure maintenance by means of cycling, from the physical nature of the operation, cannot be accomplished except separately with regard to one particular hydrocarbon pool or reservoir (see Restatement, Contracts, § 236(b), p. 327).

[2] (c) Provision is made by Article IV of the Agreement for enlargement of the "D" Sand Participating Area in the manner and under the circumstances therein described. After referring to wells producing outside the "D" Sand Participating Area to which the provisions of Article IV are otherwise applicable, that Article provides that:

> "* * * Each such well, as to the particular sand from which it is producing and the production acreage allocated to such sand, shall without further formality come under the terms of this Agreement and the production therefrom shall be unitized, and said Production Unit, with an appropriate acreage factor hereinafter determined, shall be pooled and communized with the production and acreage in such participating area as of the first day of the calendar month succeeding the happening of the event, * * *."

It thus appears that additional properties in the Cotton Valley Field to be added to a particular Participating Area must have a production Unit with the Agreement defines as

> "that acreage, not to exceed eighty acres, within the Cotton Valley Field, but outside one of the Participating Areas as defined herein, allocated by the Operator or included in his allocation to the Unit accepted by the Department of Conservation as the Unit for production of a well completed thereon outside such Participating Area but in the same producing formation."

The Agreement thus provides that the Participating Area can be enlarged only in "the same producing formation." The Court finds that the terms "formation" as used by the Agreement in the definition of Production Unit means

pool or reservoir (Carter Oil Co. vs. McCasland (Ct. of App. 10, 1951), 190 F. 2d 887.

(d) The Court finds from an examination of the Agreement as a whole that the parties did not contemplate the possibility of either the Bodcaw Sand Participating Area or the "D" Sand Participating Area under the Agreement including more than one hydrocarbon pool or reservoir, with the exception that one or more "C" Sand Reservoirs, which the parties knew could not be recycled and which were considered to be of marginal importance, were lumped in with the "D" Sand Participating Area. The Court's determination in this respect takes into consideration (1) the provisions of Article IV for limited integration of certain acreage on which there were producing oil wells (in contrast to the gas wells in the Participating Areas) immediately surrounding the "D" Sand Participating Area and the Bodcaw Sand Participating Area, not included in the respective Participating Areas, and the provision for the delivery of the gas from such oil wells to the cycling plant for return "to the sand from which produced," obviously a provision for holding pressure upon the non-integrated oil wells in the same reservoir; (2) the provisions of Article XI, p. 14, "for the return to the reservoir or recycling of some or all of the gas which may be produced from the Participating Areas above mentioned," language which identifies "Participating Area" with "the reservoir"; and (3) the provisions of Article XI, p. 15, prescribing the maximum reservoir depth at which a well could be used for injection of gas (without the consent of a preponderant majority of the Operators), demonstrating the concern of the owners of the oil wells surrounding the Bodcaw and "D" Sand Participating Areas that gas should not be injected too close to their oil wells and establishing a regulation which would prevent, without additional agreement, the injection of gas into the North "D" Sand Pool, all of which is at a greater

sub-sea depth than the established limitation. (O'Brien v. Miller, 168 U. S. 287, 42 L.ed 469.)

(e) In proceedings before the Commissioner of Conservation of the State of Louisiana, initiated by parties to the Agreement for the purpose of implementing the Agreement and making effective as to owners of rights in the Cotton Valley Field not party to the Agreement its provisions for unitization and pooling of the several Participating Areas established by the Agreement in the Cotton Valley Field, at a time substantially contemporaneous with execution of the Agreement, as well as in proceedings subsequent thereto, the parties and the Commissioner of Conservation, by his orders, construed the Agreement as providing for enlargement of the "D" Sand Participating Area and the Bodcaw Sand Participating Area to include only additional parts of the same reservoirs respectively.

[3] (f) In 1943 the parties to the Agreement discovered that the opinion which they had held at the time of the execution of the Agreement in 1940 as to the areal extent of the Bodcaw Sand reservoir included in the Bodcaw Sand Participating Area under the agreement was in error and that the Bodcaw Sand reservoir or pool of the Cotton Valley Field extended for a considerable distance to the north by reason of the fact that the underground structure containing the Bodcaw Sand reservoir declined and rose again on the north without interruption of the reservoir continuity by a decline below the level of the water contained in the reservoir. In negotiations and transactions consequent upon this discovery, the Agreement, and particularly Article IV thereof, was construed by the parties, including Plaintiff and other parties to this action, (see, for instance, Exhibit 15 to Stipulation of Fact) to provide for the enlargement of a particular Participating Area (in that instance the Bodcaw Sand

Participating Area, the provision of the Agreement for the enlargement of which is the same as that for enlargement of the "D" Sand Participating Area) to include only lands containing pressure connected parts of the same hydrocarbon pool or reservoir as was included in the Participating Area under enlargement. This construction is binding upon the parties. (Louisiana Civil Code, Article 1956, Restatement, "Contracts", § 235(e), also Comment "h"; Smyth vs. Board of Commissioners of Atchafalaya Levee District (E. D. La. 1949), 87 F. Supp. 138; Clement vs. Dunn (1929), 168 La. 304, 122 So. 122; Davis Construction Co. vs. Board of Commissioners (1940), 207 La. 590, 21 So. 2d 753.)

(g) On February 15, 1957, the "D" Sand Participating Area under the Agreement had been depleted to an extent in excess of 95% of the wet gas and recoverable hydrocarbon liquids, and the Bodcaw Sand Participating Area had been similarly depleted to the extent of almost 90%. Thus the interpretation of the Agreement proposed in this action by Plaintiff and Cross-Complainant is unreasonable and would accomplish an unreasonable and inequitable result (Restatement, "Contracts", § 236(a)).

[4] (h) Plaintiff and Cross-Complainant have the burden of proof in this action which they have not discharged (Jones, Commentaries on the Law of Evidence (Second Ed.) Vol. 2, p. 859).

7. The parties to the Agreement did not by the provisions thereof provide for the creation of an Other Participating Area in the stratigraphic interval known as the "D" Sand. The North "D" Sand Pool from which Defendant by means of the Hodges Well referred to in Finding 4 has produced oil and gas is not an Other Participating Area under the Agreement.

8. Finding 7 above is based upon the Court's determination that:

(a) Plaintiff Hunt Oil Company by its pleadings and in its argument has never claimed that the North "D" Sand pool is an Other Participating Area; and Cross-Complainant Bodcaw Company introduced the issue in a supplemental pleading and, upon the argument, discussed the matter first in a reply brief. The circumstances under which the issue has been presented to the Court indicate that it is an afterthought, which having been proposed, was thereupon abandoned. State ex rel. Chehardy vs. N. O. Parkway Commission (1949), 215 La. 779, 41 So. 2d 678; Stilwell vs. Hertz Drivuself Stations, Inc. (U.S.C.A. 3, 1948), 174 F. 2d 714.

(b) The language of Article III of the Agreement, which provides for the creation of Other Participating Areas coincidental in areal extent to the Bodcaw Sand Participating Area, in formations "other than the Bodcaw Sand and the 'D' Sand", treats the Bodcaw Sand and the "D" Sand identically as exceptions, it being obvious that the term "Bodcaw Sand" was used in Article III of the Agreement in the sense of a stratigraphic interval. It reasonably appears that the term "'D' Sand" was used in the same sense in that Article.

(c) Under the provisions of Article VI(b) of the Agreement wells completed in the "D" Sand within the geographical confines of the Bodcaw Sand Participating Area but not within the "D" Sand Participating Area (as were the Gleason and Hodges Wells referred to in these findings) are free of all the terms of the Agreement, including the provisions of Article III thereof.

(d) The Agreement has been interpreted by the parties to the Agreement and to this action, through the Legal Committee of the Cotton Valley Operators Committee and to the knowledge of the parties, as not pro-

viding for the creation of an Other Participating Area to include the North "D" Sand Pool; Defendant has acted upon this interpretation by drilling, completing and operating the Hodges Well and Gleason Well herein referred to (Restatement, "Contracts," § 235(e), Comment "h"; Ullman & Company vs. Levy (1930), 172 La. 79, 133 So. 369).

Conclusions of Law

I. This Court has jurisdiction of this action and of the parties hereto. 28 U.S.C. § 1332.

II. The Court has considered carefully the objections made by Hunt Oil Company and Bodcaw Company to these Findings and Conclusions; and, on the whole record we conclude that such objections are not meritorious and must be rejected.

[5] III. Plaintiff Hunt Oil Company and Cross-Complainant Bodcaw Company (formerly Nebo Oil Company, Inc.) have by reason of their ownership of interests in the Bodcaw Sand Participating Area and the "D" Sand Participating Area, or otherwise under the Agreement, no right or interest in oil and gas produced by Defendant The Ohio Oil Company from the North "D" Sand Pool by means of the CVOC-Ohio-Hodges No. 2 Well in NW ¼ of NW ¼, Section 36, Township 22 North, Range 10 West; and are entitled to take nothing of the Defendant by this action. A proper decree should be presented.

OPINION OF
THE COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN THE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20030

HUNT OIL COMPANY and BODCAW COMPANY
(formerly Nebo Oil Company, Inc.),
Appellants,

versus

MARATHON OIL COMPANY (formerly the Ohio Oil Company), ET AL.,
Appellees.

Appeal from the United States District Court for the Western District of Louisiana.

(August 13, 1963.)

Before HUTCHESON, Circuit Judge, LUMBARD,* Chief Judge, and BROWN, Circuit Judge.

HUTCHESON, Circuit Judge: Appellants have appealed from a district court judgment of dismissal and rejection, with prejudice, of their demands in this action initiated by Hunt Oil Company against The Ohio Oil Company (now Marathon Oil Company) to enforce rights claimed by appellants in production from two wells completed in the so-called "North 'D' Sand". We affirm the judgment of the district court.

Such rights as appellants assert exist by virtue of an agreement styled "Cotton Valley Unitization and Pressure Maintenance Agreement" (herein referred to as the "Agreement"). All parties to this litigation have executed

*Chief Judge Second Circuit, sitting by designation.

or ratified—and are bound by—it. Plaintiffs, defendant and third party defendants are parties as "Operator", and intervener is a party as "Royalty Owner". It became effective on June 29, 1940. A decision of the issues involved requires an interpretation of the Agreement.

The action presents a controversy between plaintiff and counter-claimant and ancillary thereto a demand by defendant against third party defendants for indemnity in event it is cast in this action.

By the agreement the parties thereto, including the parties to this action, unitized, pooled and communized within a "'D' Sand Participating Area" and a "Bodcaw Sand Participating Area", all oil, gas and other hydrocarbons separately as to each such participating area; and provided for the creation, within the Cotton Valley Field, under the circumstances therein described, of "Other Participating Areas"; provided for the determination of the fractional part of the total production of oil, gas and other hydrocarbons from each participating area which was to be allocated to each party to the agreement; made provision for the enlargement, under the circumstances and limitations therein described, in the Cotton Valley Field, of the Bodcaw Sand Participating Area and the 'D' Sand Participating Area; made provision for the installation and operation of a recycling pressure maintenance and liquid hydrocarbon extration and processing plant; made provision for the return to the reservoir or recycling of some of all of the gas to be produced from the various participating areas, and for sharing among operators of the expense of oil and gas production operations in the participating areas. All of these operations were provided to be directed and supervised by an Operators' Committee upon which each operator was represented. Various stipulations were made in aid of and incidental to the provisions above summarized.

If it were not for the painstaking and excellent work of the district judge, in his opinion, in sorting out

the claims and counter-claims and separating those which were from those which were not found to exist, it would be very difficult for this court, by thumbing through the bulky and numerous volumes of the record to determine what the issues are and how they should be decided. Because of the fact, however, that the district judge, in his thorough and pains-taking way has separated the wheat from the chaff and, with the aid of counsel on both sides, has made firm findings upon the specific questions raised by proposed findings and objections thereto, our labors in correctly determining where the truth and right of the case lies have been greatly aided and lightened. These findings and conclusions appear in his opinion in *Hunt Oil Co. v. Ohio Oil Co.*, 205 F. Supp. 885, and they are approved and adopted by reference.

The primary question presented here, therefore, is whether the district court's findings of fact are clearly erroneous within the meaning of Rule 52 Federal Rules of Civil Procedure, due regard being given to the opinion of the trial court to judge the credibility of the witnesses, and whether the district court's conclusions of law are correct.

The appellees insist that the district court applied settled and correct standards of interpretation in ascertaining the meaning and intent of Art. IV of the "Agreement" which underlies this case, while the appellants insist that this is not so.

We are of the clear opinion that the district judge's decision and judgment are supported by his findings of fact; that these are not clearly erroneous; that his conclusions are correct statements of the law; and that the judgment appealed from, upon the consideration and for the reasons given by the district judge, should be, and it is herewith AFFIRMED.

JUDGMENT OF THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1962

No. 29,030

D. C. Docket No. 6506 Civil

HUNT OIL COMPANY and BODCAW COMPANY
(formerly Nebo Oil Company, Inc.)

Appellants,

versus

MARATHON OIL COMPANY (formerly the Ohio Oil Company), ET AL.,

Appellees.

Appeal from the United States District Court for the Western District of Louisiana

Before Hutcheson, Circuit Judge, Lumbard, Chief Judge, and Brown, Circuit Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

It is further ordered and adjudged that the appellants, Hunt Oil Company and Bodcaw Company, (formerly Nebo Oil Company, Inc.), be condemned in solido

to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

August 13, 1963

Issued as Mandate: Oct. 15, 1963

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*Of the Second Circuit, sitting by designation.

ORDER OF THE COURT OF APPEALS FOR THE FIFTH CIRCUIT DENYING REHEARING

U. S. COURT OF APPEALS
FILED
Sep 23 1963
EDWARD W. WADSWORTH
CLERK

(585)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 20030

HUNT OIL COMPANY and BODCAW COMPANY
(Formerly Nebo Oil Company, Inc.)

Appellants

vs.

MARATHON OIL COMPANY (formerly the Ohio Oil Company), ET AL

Appellees

Appeal from the United States District Court
for the Western District of Louisiana.

(September 23, 1963)

On Petition for Rehearing

Before HUTCHESON, Circuit Judge, LUMBARD, Chief Judge,* and BROWN, Circuit Judge.

PER CURIAM:

It is ORDERED that the petition for rehearing in the above entitled and numbered cause be, and it is hereby DENIED.

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*Chief Judge Second Circuit, sitting by designation

OPINION OF
THE COURT OF APPEAL OF LOUISIANA
FOR THE THIRD CIRCUIT
IN
TEXACO, INC.
v.
VERMILION PARISH SCHOOL BOARD
145 So 2nd 383

TEXACO, INC., et al., Plaintiffs-Appellants,

versus

VERMILION PARISH SCHOOL BOARD, et al., Defendants-Appellees.

No. 544

Court of Appeal of Louisiana.
Third Circuit.

July 6, 1962.

Rehearing Denied Oct. 19, 1962

FRUGE, Judge.

This is a Declaratory Judgment proceeding filed by plaintiff-appellant, Texaco Inc., as Operator of the Erath Unit in Vermilion Parish, Louisiana, seeking judicial determination of certain rights under two unitization agreements, known as the Erath Agreements, consisting of a "Royalty Owners Agreement" and a "Unit Operating Agreement". Plaintiff has perfected an appeal to this court from a judgment dismissing their suit.

In its *Reasons for Judgment*, the trial court stated:

"Texaco, Inc., filed this suit under R.S. 13:4231 et seq., for a declaratory judgment interpreting two unitization agreements affecting the Erath recycling plant units in Vermilion Parish. These agreements will be referred to herein as the 'Erath Agreements,' being an agreement entitled Royalty Owners Unitization Agreement, Erath Field, Vermilion Parish, Louisiana, and one entitled Unit Operating Agreement, Erath Field, Vermilion Parish, Louisiana, Exhibits 1 and 2 in this record, together with certain amendments thereto, copies of which are also in evidence as Exhibits P-3, P-4, P-5, and P-6.

The petitioner asks that it be decreed that these Erath Agreements cover and include, (1) all sands within the unit area below 8000 feet as described in the agreements, and (2) particularly the School Board Sand, within said unit, as defined in Conservation Order No. 34-F, dated December 19, 1956, identified as Exhabit P-15.

"Defendants, numbering approximately six hundred persons, are all parties having an interest in the royalties, leases, minerals, and lands included in the Erath Unit, which comprises some 83 tracts of land. The surface area involved totals over four thousand acres.

"Plaintiff introduced the testimony of witnesses who took part in the formation of the Erath Unit. All are, and have been for many years, recognized as authorities in their respective fields. The purport of this testimony is that the Erath field was known to contain tremendous quantities of oil and gas bearing sands, that the original discoverers, holding leases in the unit area, concluded that the best method of developing these resources would be through the medium of a recycling plant, a method by which gas is brought to the surface, the condensate and other liquid hydrocarbons extracted therefrom, and then returned to the original reservoir beneath the surface of the earth. In order to carry out this project, the Erath Agreements were formulated by a committee of geologists, petroleum engineers, and other experts in the oil industry, and attorneys representing the operators, royalty owners, and landowners. All available geophysical information resulting from the drilling of the first ten or eleven wells was used, and the equities of all parties calculated, using what is termed the acre-foot method, whereby the net sand content under each tract of land was determined, and an estimate made of all hydrocarbons in place to determine the value of the ultimate production to be obtained from each tract of land.

"The operating committee determined that some eighteen additional wells should be drilled under the unit agreements, to provide more complete information on subsurface formations, and thereafter a final calculation of equities using such information would be made. This was done according to the terms of the Erath Agreements, the final calculation of equity made, and the project was successfully operated to the satisfaction of all parties until 1956.

"As a result of the extensive drilling conducted in the field, the one fault found, which lies in the northern portion of the unit, was pin-pointed with unusual accuracy, the various sands underlying the unit area were measured and the general overall intent of the agreements, to secure to each landowner his fair and equitable share of the products recovered, was thought to be insured, without regard to the actual location or spacing of the wells in the field.

"The agreements provide in paragraph I (b), under definitions, as follows:

"'(b). Unitized Substances—Unitized substances shall mean and include gas, gasoline, condensate, distillate, methane, ethane, propane, butanes, pentanes, hexanes, heptanes, and heavier hydrocarbons, residue gas, and unprocessed gas * * * contained in those sands or reservoirs underlying the Unit Area known and designated as the 8,500' sand * * * *and the unnamed sand found in Phillips Petroleum Company's well Fitzsimmons* No. 1, at 11,934'-11,945'.' (Emphasis supplied.)

Following this paragraph, they provide generally what the term unitized substances includes, this being all gas and the hydrocarbon content thereof found at a depth greater than 8000 feet below the surface of the earth and within the unit area, which is in a gaseous phase under virgin reservoir pressure in the reservoir. The only gas

or hydrocarbon content of gas excluded from the terms of the Agreements was that having a gravity of less than 50 degrees A. P. I. at a temperature of 60 degrees Fahrenheit and contained in sands or reservoirs found and located below 8000 feet and within the Unit Area (other than those known sands and reservoirs hereinabove specifically designated), and provided further that such hydrocarbons are *not* in a gaseous phase under virgin reservoir pressure and in place."

"The unnamed sand found in the Fitzsimmons No. 1 well, mentioned above, was *South* of the fault line running across the northern portion of the unit area. What is believed to be the same sand, or its stratigraphic equivalent *North* of the fault was reached in two wells drilling in the early stages of the explorations, the 40-1 well where the sand contained salt water and has never produced, and the Phillips-Caldwell No. 1 well, wherein the sand reached but considered dry. These two wells North of the fault were *outside* of what was finally decided upon as the Unit Area.

"In consequence of the foregoing information at the time of formation of the units, the unnamed sand in the Fitzsimmons No. 1 well, as it existed North of the fault, was considered to be unproductive commercially, and no credit was assigned to the unit lands *North of the fault* for this sand. The only credit allowed for this sand in the computation of equities specified in the Erath Agreements, was to the Fitzsimmons tract *South of the fault*.

"Since this is the disputed sand in this case, we will hereinafter refer to it as the School Board Sand, and the Court will now state that it considers the evidence at the trial to preponderate to the effect that this sand as found North of the fault is the equivalent of the sand found in the Fitzsimmons well South of the fault.

"In 1954 Phillips Petroleum Company, carrying on exploration on leases owned by it North of the Erath Unit Area (also north of the fault line which runs generally from east to west), obtained production from the School Board Sand in certain of its wells. Thereafter, in 1956, the Unit Operators deepened the 3-2 *unit well within the unit area and North of the fault line*, and obtained production from the School Board Sand. This well is located on tract 3 of the Unit, belonging to the Vermilion Parish School Board.

"Further development resulted in the Conservation Department's Orders embraced in the 34-F series, establishing units for the School Board Sand, one of which is located entirely within the Erath Unit Area as described above. Plaintiff's Exhibit B shows the location of the School Board Sand units, in relation to the original Erath Unit, as well as the ownership and numbers of those tracts of land affected thereby which lie within the original unit lines.

"When it became apparent that royalties from this production would be paid on the same basis as provided for in the Erath Agreements, the Vermilion Parish School Board protested to the Unit Operator, demanding its full royalty share in this production from the School Board Sand underlying its tracts 3 and 4 *North of the fault area*. The matter was presented to the Commissioner of Conservation, who, on November 6, 1957, issued a 'Clarification of Order No. 34-F' setting forth expressly that that order was merely to regulate the spacing of wells and the creation of drilling and production units within the School Board Sand reservoir and not to determine whether the production from the School Board Sand was affected by the private contract between the parties known as the Erath Unit Agreement.'

"Primarily, this inquiry must decide whether or not the School Board Sand as it exists under those lands

embraced within the Erath unit area, is subject to the Erath Agreements.

"The Vermilion Parish School Board and certain other landowners and mineral owners whose interests in the unit lie *North* of the fault, maintain that this sand is not covered by the Agreements, principally because (1) there is no consideration therefor, (2) it is ultra vires, violating Act 96 [93] of 1936 and its amending statute, Act 153 of 1942, (3) there was an error or mistake of fact, vitiating the School Board's consent, and (4) if applicable, the agreements constitute a gift or donation of the Board's interest in the sand, which is null and void. These arguments have been adopted and advanced by the other parties opposing the suit of the petitioner, Texaco, Inc.

"The record is voluminous, consisting of two drawers of a filing cabinet containing the exhibits, introduced at the trial, testimony of witnesses, and other documents in the case. Able counsel representing the various litigants, with unusual diligence and an abundance of energy have compiled some 227 pages of written briefs covering all points of law and fact that can be conceived, and all arguments that could be advanced under this wealth of material.

"This Court does not have the time nor the inclination to discuss the record in detail. The salient facts are as outlined above.

"The Erath Agreements must be interpreted in the light of pertinent articles of our Civil Code, wherein we find the following:

"'Art. 1945. Legal agreements having the effect of law upon the parties; none but the parties can abrogate or modify them. Upon this principle are established the following rules:

"'*First*—That no general or special legislative act can be so construed as to avoid or modify a legal contract previously made;

"'*Second*—That courts are bound to give legal effect to all such contracts according to the true intent of all the parties;

"'*Third*—That the intent is to be determined by the words of the contract, where these are clear and explicit and lead to no absurd consequences;

"'*Fourth*—That it is the common intent of the parties—that is, the intention of all—that is to be sought for; if there was a difference in this intent, there was no common consent and, consequently, no contract. (As amended by Acts 1871, No. 87.)

"'Art. 1949. When there is anything doubtful in one contract, it may be explained by referring to other contracts or agreements made on the same subject between the same parties, before or after the agreement in question.

"'Art. 1950. When there is anything doubtful in agreements, we must endeavor to ascertain what was the common intention of the parties, rather than to adhere to the literal sense of the terms.'

Also of interest in the discussion to follow are Articles 1958, 1960, and 1961.

[1] "Plaintiff introduced oral testimony of witnesses who were present during the formation of the agreements, and also transcripts of hearings conducted by the Conservation Commissioner containing the testimony of various witnesses called on those occasions. The Court advised counsel once or twice during the trial that this evidence would not be considered admissible, under the general rule that conversations and negotiations leading up to a written agreement are not to be considered

after execution of the contract unless there is ambiguity in the written document. Art. 1945-3 Revised Civil Code. No weight has been attached to this evidence by the Court, although it was permitted to go into the record subject to the objections of the defendants, for purposes of appeal.

[2] "Examining the contracts in this case, and confining the inquiry to the four corners of the instruments, we find that they were executed for the purpose of obtaining maximum recovery through the recycling plant operation, from the many valuable sands underlying the Erath Unit. The operating companies were willing to assume the expense of this undertaking, provide the plant facilities, and operate the project.

"Both the Royalty Owners agreement and the Operators Agreement are correlative and complementary to each other. References made in each contract to the provisions of the other, and in order to ascertain the intent of the parties, they must be read and construed together.

"In Article IV of the Royalty Agreement, duplicated in Article V of the operating agreement, the parties set out the formula by which the equity of participation in each tract embraced within the unit was calculated as of June 1, 1942, and they then proceed to stipulate in Article XVI of the Royalty Agreement that additional wells would be drilled, and then not later than June 1, 1944, these equities would be recalculated by the unit operator according to this same formula as provided in Article XXV of the operating agreement. This was done, and a revised Exhibit D, showing the percentages of equity was calculated and filed after the [illegible] reservoirs at the time had been fully explored. These equities are the moving cause for the Agreements.

"The entire purport of the agreements was and is to insure for each landowner the value of the minerals

in place under his land, then known to exist and to be discovered thereafter below 8000 feet.

"The School Board Sand fits the definition of unitized substances and is the geological equivalent of one of the *known* sand reservoirs in 1942, found in the Fitzsimmons well, South of the fault. But the School Board Sand *North* of the fault line was *not a known reservoir or sand in 1942*, as that term is used in these agreements. If included in the agreement at all, it is under the second paragraph of Article I-b(1), which reads as follows:

"'Unitized substances shall also mean and include gas (including all hydrocarbon content thereof) and any mixture of liquid hydrocarbons in the proportions condensed or absorbed from or separated out of, the gas and contained in sands and reservoirs found and located at a depth greater than 8000 feet below the surface of the earth and within the Unit Area, provided such liquid hydrocarbons under virgin reservoir pressure are in a gaseous phase in the reservoir.'

This language clearly and unmistakably includes such *unknown reservoirs*, but the calculation of equities set out in Exhibit 'D' of the Agreements, recalculated as provided in Exhibit 'E' of the Royalty Agreement (subsections (a), (b), and (c) of Section 1 of Article XXV of the Unit Operating Agreement) has application only to the sands and reservoirs *known* to exist and to contain unitized substances on June 1, 1942, determined with exactness after the completion of the additional wells provided for in the contracts, but not later than June 1, 1944. This all parties, Royalty Owners, and operators, fixed their equities in accordance with the obvious intention of all parties, to secure for each the full acre-foot value of the known reservoirs underlying his property.

"Having concluded that the original and revised Exhibit 'D' calculation of equities applies only to sands

and reservoirs *known* to contain unitized substances on June 1, 1944, we must examine the contracts further to seek out the parties' intention regarding *unknown reservoirs*, or the second paragraph of Article I (b) of the agreements can have no effect, and the School Board Sand as it is found today North of the fault area is not covered by these agreements, but by the 34-F series of orders of the Conservation Commissioner.

"In addition to the rules laid down in Articles 1949 and 1950 of the Revised Civil Code quoted above, Article 1951 of the Code is particularly illuminating here. It provides:

"'Article 1951. When a clause is susceptible of two interpretations, it must be understood in that in which it may have some effect, rather than in a sense which would render it nugatory.'

and, further, Article 1955 says:

"'Article 1955. All clauses of agreements are interpreted the one by the other, *giving to each the sense that results from the entire act.*'

"Bearing these fundamental concepts in mind, it will be noted that both agreements provide for the operation of the Unit Area by an 'Operating Committee,' having certain well defined powers and authority outlined in Article XI of the Operating Agreement. This article provides in part as follows:

"'The operating committee shall have, among other powers, the specific powers and duties enumerated below:

"'3. To approve or disapprove the drilling of additional wells either for the production of unitized substances or for injection wells.

"'11. *To adjust equities and ownerships in the Unit Area as provided by this Agreement.*

"'12. To appoint and grant authority to such subcommittees as it may deem proper and requisite, as for example, Legal Committee, Engineering Committee, Geological Committee, Auditing Committee, and Tax Committee.

"'13. The Operating Committee shall have all such powers and duties as are provided by any other provision of this Agreement, either expressly or by implication, *and such other powers and duties as may be reasonably necessary in supervising and controlling operations of the Unit Area* and building and operating the extraction and cycling plant.' Emphasis supplied.

[3] "Council for Texaco, Inc., Humble Oil Company, and others in opposition to the position taken by the defendants having interest in the Unit Area North of the fault line, maintain that sub-paragraph 11 above has reference only to the final calculation of equities in the manner set out in Exhibit "E" of the Royalty Agreement, effected on June 1, 1944. However, we note that this paragraph is carefully preserved in amendments to Article XI of the Unit Operating Agreement, occurring as late as 1949, as shown by Exhibit P-3. There can be no doubt that it applied to this determination of equities in 1944, but it is equally clear that the power to "adjust equities * * * as provided in this Agreement" has general application as well, and particular reference to the *formula* for calculating equities in keeping with the primary intention of the parties, to insure to each of the parties "his fair and equitable share of the products recovered." Article 1962 of the Revised Civil Code of this State provides:

"'Art. 1962. When a contract contains general obligations, and the parties, in order to avoid a doubt whether a particular case comes within the scope of the agreement, have made special provision for such case, the general terms of the contract shall not on this account be restricted to the single case that is provided for.'

"Surely these experienced and learned professional men who undertook the formulation and adoption of these agreements and this pioneer project of the industry they serve recognized in 1942 and in 1944 that there could be vast *unknown* reservoirs of unitized substances underlying the Unit Area which would or could be reached and tapped in the future by improved drilling techniques to greater depths, and most profitably produced by extractions and cycling of these gaseous substances in the recycling plant. So elementary is such a concept that the Court does not doubt that every landowner and royalty owner, most of whom are laymen, understood that this possibility existed. For this reason, the original and revised calculation of equities detailed in Exhibit 'D' of the agreements was and is restricted to sands and reservoirs *known* to contain unitized substances *in 1942 and 1944*, and the calculation of equities in such reservoirs *undiscovered at that time but included in the above quoted second paragraph of the definition of 'Unitized Substances'* was left to future determination by the Operating Committee subject to the approval of the Conservation Commissioner, all as provided in this Agreement.'

"Not only is this conclusion apparent from the agreements, but the duty of the Committee to so fulfill its obligations is to be implied from the very nature of the contracts in question. There is no evidence whatsoever of an intention on the part of these landowners and operators to irrevicably fix or 'freeze' their participation in production from the unit area for all time, and as to all possible unknown reservoirs of unitized substances. Indeed, the contrary is expressly shown by the clear restriction of Exhibit 'D' interpreted in the light of Exhibit 'E' of the Royalty Agreement, and other pertinent provisions of the agreement, to such reservoirs as were *known* and *exactly determined at that time*.

"Nor can it be said that such an interpretation, giving effect to all of the clauses of the agreements, has the effect of changing or varying Exhibit 'D', for the same reason, repeated for emphasis, that such calculations as are detailed in the revised Exhibit 'D' remain in effect and pertain only to the reservoirs contemplated therein, known to exist at that time.

"Having adopted this interpretation of the Erath Agreements, the authority of the Commissioner of Conservation in respect to the School Board Sand is limited as stated by him in the Clarification of Order 34-F, dated November 7, 1957. Monsanto Chemical Co. vs. Southern Natural Gas Company, 234 La. 939, 102 So.2d 223, and Arkansas-Louisiana Gas Company vs. Southwest Natural Production Company, 221 La. 608, 60 So.2d 9.

"Judgment is hereby rendered and formal decree will be signed after preparation and presentation for signature, jointly by the attorneys for Texaco, Inc., and the attorneys for Vermilion Parish School Board, declaring and fixing the rights of the parties to the Erath Agreements as follows:

"1. The School Board Sand as defined hereinabove is covered by the Erath Agreements, as amended, as are all sands below 8000 feet located beneath the Unit Area as delineated by said agreements and containing 'unitized substances' defined in Article I (b) of said Erath Agreements, whether or not said sands and reservoirs were known or unknown at the time of the confection of such agreements.

"2. The percentage of equities allocated to each numbered tract of the Unit Area, expressed in Exhibit 'D' of said agreements as finally amended, recalculated, and revised, has application only to those sands and reservoirs located in the Unit Area known to contain unitized sub-

stances capable of being produced commercially on and as of June 1, 1944.

"3. Said percentage of equities as expressed June 1, 1944, does not apply to the School Board Sand Reservoir containing unitized substances discovered in 1956 North of the fault line lying in the North portion of the Unit Area, as delineated on Exhibit P-B, nor does it apply to any other like sands and reservoirs in said Unit Area below 8000 feet which were not known and discovered as commercially production horizons as of June 1, 1944.

"4. The Unit Operating Committee, subject to approval to approval of the Commissioner of Conservation of the State of Louisiana, is expressly charged with the power and duty to calculate the percentage of equity of each tract lying in the Unit Area north of the fault line shown on Plaintiff's Exhibit P-B, with respect to the School Board Sand underlying said tracts, using the method and formula set out in Article IV of the Royalty Owners Agreement and in Article V (1) of the Unit Operating Agreement applicable to known reservoirs in June, 1942, and 1944, and the participation of all parties having interests in and to production from the tracts North of the fault line is to be governed accordingly.

"5. All sands and reservoirs containing unitized substances as defined in said agreements capable of being produced commercially, and located below 8000 feet from the surface of the earth, not known and determined in June, 1942, or June, 1944, which may be hereinafter placed in production, are to be similarly calculated and treated.

"6. The provisions of Article XI (3), (11), (12), and (13) of the Unit Operating Agreement are held to be applicable to such new sands and reservoirs containing unitized substances, hereafter placed on production in the unit area, including the School Board Sand north of the fault line shown on plaintiff's Exhibit P-B, and the grant

of express and implied powers of said Unit Operating Committee therein set out is held to include the giving of notices to all interested parties of such calculations and adjustments as may be or hereafter become necessary hereunder for the purpose of carrying out the objects of said Erath Agreements for the benefit of all parties in interest, in keeping with the views herein expressed.

"7. It is further held that such notices of calculations and adjustment of equities in said sands and reservoirs containing unitized substances capable of being commercially produced, are impliedly required to be done with reasonable dispatch, and to follow as to form the original notices, allocations and delineations set out in Exhibits 'A', 'B', 'C', and 'D' of the Erath Agreements, as may be reasonably possible.

"The fees of the expert witness attending and testifying at the trial are fixed in the sum of $75 per day for each day's attendance. The fees of the attorneys appointed herein to represent absent defendants are fixed as follows:

I. P. Saal, Jr.	$850
Roger C. Edwards	550
Lavelle Broussard	150
Carol L. Spell	250

"All of the above mentioned fees are to be taxed as costs, and costs are to be paid by petitioner, Texaco, Inc., Unit Operators of the Erath Unit."

Although we believe that the trial court has covered all necessary points, nevertheless, we would like to re-emphasize certain things.

Early in the development of oil and gas production from the area now known as the "Erath Field", the interested parties in the area recognized that joint efforts would be required to further the cause of conservation and

obtain maximum recoverability of the hydrocarbons located beneath the area. After *intensive* geological study and negotiation two unitization agreements were executed. The first, "Royalty Owners Utilization Agreement, Erath Field, Vermilion Parish, Louisiana" was executed by those persons having royalty interest in the area. The second agreement, complementary in nature, was entitled "Unit Operating Agreement, Erath Field, Vermilion Parish" and executed by the various leasehold owners. These agreements are in the record as Exhibits 1 and 2, respectively, and will be referred to herein as "Erath Agreements". A general plan of production, essentially a recycling operation, was established by the Erath Agreements and an Operating Committee was appointed to implement the plan.

The Erath Agreements established that the division and relative ownership of the production from the Erath Unit would be determined by a calculation of *equities*. Most simply stated, the production was payable to the various individuals in the proportion which the recoverable hydrocarbons in place attributable to each individual's tract ownership bore to the total recoverable hydrocarbons in place within the Unit area. The original Erath Agreements set forth a tentative Unit area and *equity* allocation. The agreements further provided that additional wells would be drilled and that a subsequent study would be made to determine the actual unit area and the precise *equity* allocation. This was accomplished in 1944 and is embodied in revised Exhibit "D" to the agreements. Production in paying quantities has been maintained continuously since the execution of the Erath Agreements, and royalties were paid from 1944 to 1956 in accordance with the *equities* as set forth in revised Exhibit "D". In 1956 the "School Board Sand" was discovered to be productive North of the major East-West fault running through the Erath Unit. The Conservation Department established various units for production from the School Board Sand

by its 34-F series of orders. One of the units so established is located entirely within the Erath Unit area. The Vermilion Parish School Board and others, made demand on Texaco, Inc. (as Operator of the Erath Unit) to be paid on the basis that the Erath Agreements did not affect the School Board Sand. Texaco, Inc. brought this declaratory judgment of the Trial Court decreed that the School Board is covered by the Erath Agreements, and (2) the proper method of payment of royalties accruing for production from the School Board Sand within the Erath Unit. The judgment of hte Trial Court decreed that the School Board Sand *was* covered by the Erath Agreements *but* held that *only* the parties having interests in tracts overlying the School Board Sand reservoir North of the fault would be entitled to participate in production from *that* reservoir. The Court further ordered the Unit Operating Committee of the Erath Unit to recalculate the *equities* and to make future payments in accordance with the revised *equities*.

Plaintiffs (referring to and relying on Monsanto Chemical Co. v. Southern Natural Gas Co., 234 La. 939, 102 So. 2d 223 and Arkansas Louisiana Gas Company v. Southwest Natural Production Company, 221 La. 608, 60 So. 2d 9, which was cited in the Monsanto case, supra) state that the Monsanto agreement and the Erath Agreements are identical. We have noted these cases and we believe that they are inapposite and clearly distinguishable from the instant case. In the Monsanto case, supra, an agreement was entered into between various lease owners of oil and gas leases covering *Section 31*, T. 17 N., R.S.W. integrating their interest in section 31 "for the *discovery and production* of gas from any and all horizons, formations or zones." This agreement further provided that "to remain in full force and effect so long as said Section 31 * * * constitutes a unit for the development and production of gas from any horizon, formation or zone, whether under the terms of pooling and unitization agree-

ments, *or* orders of the Department of Conservation of the State of Louisiana covering said unit, or any extension or renewal thereof, by production or otherwise." In accordance with this agreement a well was drilled and completed.

Factually, the Monsanto case, supra, differs from the instant case in that commercial production had already been obtained in the Erath Field prior to the confection of the Erath Agreements, and bona fide and diligent attempts were being made to determine as nearly as possible the exact amount of productive sands under each tract and to adjust the equities accordingly. The Erath Agreements may be analogized to a compact where each party is to receive an *equitable* share of the production in accordance with the productive sands which underlie his respective property. On the other hand in the Monsanto case, supra, the parties did not know *in advance* whether Section 31 would be entirely productive, nor could they even make any *attempt* to allocate equity on the "acre-foot" basis as was done in the Erath Agreements. In the Monsanto case, supra, the agreement may be analogized to an act of exchange whereby parties—not knowing in advance what hydro-carbons lie under their respective properties—enter into an act of exchange to share any and all production from a given area or "unit" (example Section 31) and the percentage of royalty is fixed *in advance* according to the *surface* acreage contributed to the "unit" rather than the amount of "acre-foot" of productive oil gas sand or sands located *under* the property of the various owners. Certainly the legality and binding effect of such "acts of exchange" of speculative mineral royalty interest (as in the Monsanto case) in a relatively undeveloped area or "unit" can be questioned, and these acts of exchange and these private contractual rights are "only superceded when they are in conflict with the valid orders of the Commissioner of Conservation, i. e., *when the order is a conservation measure, pure and simple.* * * *" (See Monsanto Chemical

Co. v. Southern Natural Gas Company, supra. The purpose of the Erath Agreements, as contrasted from the Monsanto case, was to determine in advance the *exact* amount of "acre-feet" under each tract and fix the royalty participation accordingly; the most outstanding feature of this agreement was the *goal of attempting to achieve equitable distribution of royalty.*

[4] We believe that, under the facts and circumstances of this particular case, the solution set forth by Judge Putnam and detailed in his judgment and the reasons therefor, is eminently correct, and we, therefore, adopt his reasons as our own and affirm his judgment.

For the reasons assigned, the judgment of the trial court is affirmed.

Affirmed.

SAVOY, Judge (concurs in the results).

After examining the Unit Operating Agreement and the Royalty Owners Unitization Agreement in the instant case, I am of the opinion that the results reached by the author of the majority opinion are correct although I disagree with a portion of his reasons for judgment.

From a reading of the decisions of our Supreme Court dealing with voluntary units, it appears that they fall in three categories, with certain presumptions attaching to two of them. These are:

(1) Units declared by the lessee alone under the pooling clauses of the different leases. In this type of case, the lessors did not intend to "freeze" their interests, and if the units are thereafter changed by the Conservation Commissioner, the declared units must give way to the Commissioner's units *unless* the pooling clauses of the lease are specific to the contrary. In other words, there is

a presumption here that the change is contemplated. This is in essence what we held in Humble Oil & Refining Co. v. Jones, (Ct. App., 3 Cir., 1960), 125 So. 2d 640.

(2) Voluntary units, formed through a complete agreement signed by all lessors and lessees, should *not* be subject to change by the Conservation Commissioner's order *unless* the parties have expressly stipulated for this change in the agreement. Here it is presumed that the parties intended to freeze their rights because all of the parties participated in the confection of the voluntary unit agreement, and where they agreed on certain fixed interests and did not contract to have them changed, their contract should be the law of the contract.

(3) The third type of agreement is the one under consideration in the instant case. It does not involve a head-on clash between the voluntary unit and the Commissioner's unit as do the other two types of units discussed herein. This is emphasized by Conservation Commissioner Hussey's clarification of his own order. Rather, it involved determination of exactly what is covered by the "Erath" agreement, and if the School Board sand is found to be so included, there is no conflict at all, since the parties would then be in a position to have the new "equities" submitted to the Conservation Commissioner for approval.

The instant case is one where the parties failed to spell out the making of further adjustments of equities after 1944, and yet, did not specifically "freeze" the equities as of that date for the remaining life of the contract.

It is my understanding that all of the more modern agreements squarely cover the contingency, one way or the other.

I am of the opinion that the results reached by the majority and the trial court are correct for the following reasons:

(1) Since the geologists have established that the School Board sand and the "unnamed sand found in Phillip Fitzsimmon's No. 1 Well" are the same, I believe that the School Board sand is specifically covered in the definition of Unitized Substances. I disagree with Judge Putnam that it has to be covered under the second paragraph of Par. 1(b). I believe it is the same sand, divided by a fault. This was defined in the first paragraph of Par. 1(b). The definition is not restricted to reserviors, but refers to sand or reservoirs (a sand, unlike a reservoir, extends across a fault.) It appears that this sand was specifically covered, but that its total productive area was not covered in 1944.

(2) If I should be in error as to the conclusions reached in No. 1, the School Board sand clearly falls within the definition contained in the second paragraph of 1(b), as stated by Judge Putnam.

(3) The paramount reason why it appears to me that the sand must be included is the drastic effect that a contrary conclusion would have on the contract as a whole. Certainly there is no difference between this sand and a new 15,000' gas sand that might be discovered tomorrow within the unit area. In fact, for the reasons outlined in No. 1, it may be even clearer that the sand is covered.

But, going back to our assumed new 15,000' sand, it clearly would be covered by the second paragraph of Par. 1, (b); just as clearly under Article IX, page 5, of the Royalty Owners Unitization Agreement; drilling to and completion under each of the unitized leases so as to maintain them in effect; equally as clear is the fact that the completion in this sand would not be a non-unitized operation under Paragraph XVII, page 7, of the Royalty Owners Unitization Agreement.

However, if we hold that the equities were "frozen" as of 1944, there simply would be no method whatever of bringing this sand in the unit.

In effect, this would require a holding that after June 1, 1944, all provisions of the contract relating to sand below 8,000' must be wiped out except for the specific sands included in equity determinations made on that date. I cannot find an intention to do this in the agreement.

I also find that the Operating Agreement was amended in 1949, and that the parties preserved sub-paragraph 11 of Article XI of the Operating Agreement providing for the adjustment of equities and ownerships in the unit area.

The record reveals that the School Board did not receive any equity in the Erath Unit for the School Board sand which was found in 1955 or 1956, north of the fault.

It appears to me that the more reasonable construction of the agreement is the one which tends to give it effect rather than to partially destroy it.

For the above reasons, I concur with the results reached by the majority in the instant case.

On Application for Rehearing.

En Banc. Rehearing denied.

HOOD, J., is of the opinion that a rehearing should be granted.

OPINION OF

THE SUPREME COURT OF LOUISIANA

IN

TEXACO, INC.

v.

VERMILION PARISH SCHOOL BOARD

152 So 2nd 541, 244 La. 408

TEXACO INC., et al.

v.

VERMILION PARISH SCHOOL BOARD et al.

Supreme Court of Louisiana.

April 29, 1963.

HAMLIN, Justice.

In the exercise of our supervisory jurisdiction (Art. VII, Sec. 11, La. Const. of 1921) we directed limited certiorari to the Court of Appeal, Third Circuit, in order that we might review its judgment affirming a judgment of the trial court which fixed and adjudged the rights of plaintiffs and defendants under certain agreements designated as the "Erath Agreements."[1]

Texaco Inc., Operator of the Erath Unit of the Erath Field, Vermilion Parish, instituted the present declaratory judgment proceedings (LSA-R.S. 13:4231-4246; now incorporated in Arts. 1871-1883, LSA-C.C.P.); it prayed for a judicial interpretation of the Erath Agreements, infra, and asked that such interpretation decree that a certain sand known as the "School Board Sand," infra, was covered by the agreements.

Defendants, approximately six hundred persons, were all parties having an interest in the royalties, leases, minerals, and lands included in the Erath Unit, it comprised some eighty-three tracts of land with a surface area of over four thousand acres.

The matter involved concerned the Erath Field; it contained tremendous quantities of oil and gas bearing

1. La. App., 145 So. 2d 383.

sands. The original discoverers holding leases in the unit area concluded that the best method of developing these resources would be through a recycling plant, and the Erath Agreements were formulated by a committee of geologists, petroleum engineers, experts in the oil industry, and attorneys representing the operators, royalty owners, and land owners in order to carry out the project. The Erath Unit was established in 1942 by two agreements which constituted the Erath Agreements; one was known as the "Royalty Owners Unitization Agreement" and was executed by the owners of royalty and other interests, and the other was termed the "Unit Operating Agreement" and was executed by the owners of operating interests and working interests. Both agreements were executed and became effective at the same time, their purposes were the same, and they were interrelated and complementary to each other.

As provided in the agreements, the recycling unit was established by January 1, 1944, at an alleged cost of between $3,500,000.00 and $4,000,000.00.[2] The Erath Agreement unitized eighteen producing sands encountered in twenty-nine wells, eleven being pre-unit wells and eighteen being drilled before 1944 below 8,000 feet. The agree-

2. The record discloses that by the recycling process gas is produced from the unitized sands, the desirable hydrocarbon fractions are extracted therefrom, and the residue gas is then returned to such of the unitized formations as the operator may select for the purpose. This enables the operator to store gas awaiting a favorable market, and it also maintains reservoir pressures near their original values, thereby preventing loss from condensation and from water intrusion in the sands which would result from diminishing pressures. It is alleged that at the time the unit was created, the expert opinion was that the recycling operation would result in the recovery of 133 million barrels of plant product, 50% of which would otherwise be lost, and in the saving of 1.5 trillion cubic feet of gas for the day when a favorable market would be available.

ments adopted the acre-foot formula as a basis for the participation of each tract in unit production and costs and in unit operation and management. By this method the hydrocarbons in place under the unit as a whole are calculated as well as the hydrocarbons in place under each tract, and each tract is allocated an equity which its underlying hydrocarbon content bears to the total hydrocarbons in place under the entire unit. A final calculation of equities had to be made at a date not later than June 1, 1944.[3]

The equities were calculated (Revised Exhibit D), and the Erath Unit operated within the eighteen producing sands for approximately twelve years.

In 1956 one of the existing unit wells on the Vermilion Parish School Board Tract (part of the Erath Field and north of the Fault Line) was deepened and completed in a sand known as the "School Board Sand" at an interval of 11,784 to 11,822 feet, Schlumberger measurements. This sand is sometimes referred to as the "Nineteenth Sand." The Department of Conservation, State of Louisiana, issued clarification orders with respect to the exploration for and production of gas and condensate from the School Board Sand of the Erath Field (Order 34-F). The Vermilion Parish School Board and other parties owning interests in the tracts overlying the School Board Sand would not recognize the sand as included in the Erath Agreements, and they declined to accept payment on account of production from that sand on a unitized basis.

Texaco Inc., as stated supra, instituted the present suit; after hearing and submission of the matter on briefs, the trial court interpreted the Erath Agreements on the issues presented and held in part:

3. From a statement of the case of Relator Texaco Inc. See also, Art. IV, "Royalty Owners Unitization Agreement."

"(1)

"The School Board Sand as defined in Conservation Department Order No. 34-F, dated December 19, 1956 * * * is covered by the Erath Agreements, as amended, as are all sands below 8000 feet located beneath the Unit area as delineated by said agreements and containing 'unitized substances' defined in Article I(b) of said Erath Agreements, whether or not said sands and reservoirs were known or unknown at the time of the confection of such agreements.

"(2)

"The percentage of equities allocated to each numbered tract of the Unit Area, expressed in Exhibit 'D' of said agreements as finally amended, * * * has application only to those sands and reservoirs located in the Unit Area known to contain unitized substances capable of being produced commercially on and as of June 1, 1944.

"(3)

"Said percentage of equities as expressed June 1, 1944, does not apply to the School Board Sand Reservoir containing unitized substances discovered in 1956 north of the fault line lying in the north portion of the Unit Area * * * nor does it apply to any other like sands and reservoirs in said Unit Area below 8,000 feet which were not known and discovered as commercially productive horizons as of June 1, 1944.

"(4)

"The Unit Operating Committee, subject to approval of the Commissioner of Conservation of the State of Louisiana, is expressly charged with the

power and duty to calculate the percentage of equity of each tract lying in the Unit Area north of the fault line * * * using the method and formula set out in Article IV of the Royalty Owners Agreement, and in Article VII of the Unit Operating Agreement applicable to known reservoirs in June, 1942 and 1944, and the participation in production from said reservoir by parties having interests in the tracts north of the fault line is to be governed accordingly; it being held that only those parties having interests in tracts within the Unit Area overlying the School Board Sand Reservoir north of the fault line shall participate in production from said reservoir.

"(15)

"All sands and reservoirs containing unitized substances as defined in said agreements capable of being produced commercially and located below 8000 feet from the surface of the earth, not known and determined in June, 1942, or June, 1944, which may be hereafter placed in production, are to be similarly calculated and treated.

"(16)

"The provisions of Article XI (3), (11), (12), and (13) of the Unit Operating Agreement are held to be applicable to such new sands and reservoirs containing unitized substances hereafter placed on production in the unit area, including the School Board Sand north of the fault line shown on Plaintiff's Exhibit P-B, and the grant of express and implied powers of said Unit Operating Committee therein set out is held to include the giving of notices to all interested parties of such calculations and adjustments as may be or hereafter be-

come necessary hereunder for the purpose of carrying out the objects of said Erath Agreements for the benefit of all parties in interest, in keeping with the views herein expressed."

After the Court of Appeal affirmed the foregoing judgment, Texaco Inc., Tidewater Oil Company, Grace Goldston Barber, et al., Humble Oil & Refining Company, and Phillips Petroleum Company separately applied to this Court for Certiorari. Writs were granted, limited to a review of these two questions:

"1. Whether royalties from the School Board Sand should be paid

"a. On the basis of a recalculation of the equity of each tract in the whole Erath Unit, or

"b. On the basis of a calculation of the percentage of equity of each tract shown on Plaintiff's Exhibit P-B to be lying in the Unit Area North of the fault line.

"2. Whether the percentage of equity in all sands and reservoirs containing unitized substances not known and determined to be productive in June, 1944, which may hereafter be placed on production, are to be calculated according to judgment to be rendered herein."

The following specification of errors was assigned in this Court by Texaco Inc. and those parties alligned with it:

"1. Since it has been finally determined herein that the School Board Sand and such general sands as may hereafter be encountered below 8000 feet are unitized sands and covered by the Erath Agreements, it was entirely inconsistent to hold and the

Court of Appeal erred in holding, that production from such sands belong entirely to the tracts overlying the same to the exclusion of all other tracts in the Unit Area.

"2. The Court of Appeal erred in so segregating and allocating the production from the School Board Sand and the other sands in question, as the express provisions of the Erath Agreements are to the contrary.

"3. The judgment of the Court of Appeal is erroneous, as it creates foreign bodies within the Unit Area which are so incompatible with the general unit plan of joint operation and common ownership as to render it impossible to develop and operate the segregated sands as part of the larger unit either separately or with relation to other unitized sands.

"4. The Court of Appeal erred in ruling that production from certain sands unitized by the Erath Agreements must be awarded on a non-unitized basis when the parties themselves did not so plead or contend in this case, did not offer an iota of evidence in support thereof, and never envisioned such a concept as a legal possibility in this suit.

"5. The Court of Appeal erred in failing to hold that the recalculated equities as set forth on Revised Exhibit D of the Erath Agreements govern all unit production for the entire life of the Recycling Unit whether obtained from the named sands or from any other unitized sand thereafter encountered.

"(Alternative)

"6. In the event it is held that the recalculated equities of Revised Exhibit D do not fix participa-

tion in unit production for the life of the unit, the Court of Appeal erred in failing to hold that the equities for the entire Recycling Unit are to be determined by adding the value of the School Board Sand to the equities shown on Revised Exhibit D, and making such adjustment in the tract equities for the field as will result from allocating the increased equity represented by the School Board Sand to the tracts overlying the same.

"7. And said court erred in failing to adopt the same formula with respect to any other unitized sand hereafter encountered."

Vermilion Parish School Board, et al. urge in this Court that the manner of distributing the School Board Sand production ordered by the Court of Appeal is fair and equitable and conforms with the intent of the parties to the unit agreements, and that it should be confirmed.[1]

Because of our limited review, the only matters for determination before this Court are the basis of payment of royalties and the effect of such determination on the payment of royalties on reservoirs discovered in the future from sands now unknown.

Bearing the above matters in mind, we cannot help but observe the following insoluble problems that counsel for Texaco Inc. have set forth in brief and which they state would not have gone unanswered if the contracting parties had intended to segregate certain sands of the agreements as decreed by the Court of Appeal

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1. On March 27, 1963, counsel for Vermilion Parish School Board filed a motion asking that this Court issue an order limiting the argument to be presented by plaintiffs-appellants in this matter to Specification of Errors Nos. 6 and 7, and to the limited questions specified by this Court to be presented on this writ of review. They further requested that Specification of Errors Nos. 1, 2, 3, 4 and 5 be stricken from Texaco Inc.'s brief.

"1. Are the costs of drilling and developing the School Board Sand and of processing and recycling production therefrom to be borne entirely by the tracts overlying that sand, or by the entire unit?

"2. If such costs are to be borne entirely by the tracts overlying the School Board Sand, how can joint unit costs which are applicable to all tracts in the unit be divided and separately allocated according to sands?

"3. If costs relating to the School Board Sand are to be borne by the entire unit, does the School Board Sand bear its proportion of costs of operation and production elsewhere in the Unit Area?

"4. If costs relating to the School Board Sand are to be apportioned on a unit-wide basis, how can the percentages of those costs for the tracts overlying the School Board Sand be determined, considering that, under the Court's ruling, the School Board Sand is a segregated sand and has no percentage value in the unit as a whole?

"5. How can the same cost determination be made for the remaining tracts in the unit with respect to the School Board Sand?

"6. Assuming such percentage factors could be determined and such costs allocated on a unit wide basis, how will the Court preserve the balance between costs and production as provided in the agreements considering that all production from the School Board Sand is allocated to the tracts overlying that sand?

"7. Since unit operations and management are governed by voting interest, will the School Board Sand have a voting interest in operations

elsewhere in the unit, and will the remaining tracts of the unit have a voting interest in operations relating to the School Board Sand?

"8. How will the voting interests of each be calculated, considering that the School Board Sand does not represent a percentage interest in the whole unit?

"9. How can the separate ownership of Unitized Substances produced from the School Board Sand be preserved if such substances are injected into other formations, and how can the unit wide ownership of Unitized Substances produced from elsewhere in the Unit Area be preserved if such substances are injected into the School Board Sand?

"10. If pressure-maintenance is needed in the School Board Sand to properly develop that sand and to insure the greatest ultimate recovery of Unitized Substances therefrom, how will the problems stated in 9 be coped with?

"11. Can the leases within the entire Unit Area be *legally* preserved if the only unit production being obtained is from the School Board Sand and the only operations being had are in connection with that sand?

"12. If the School Board Sand should be the last producing sand, would the payment of royalties therefrom to the owners of the overlying tracts constitute full performance of *all obligations* to pay royalties, and maintain the unit agreements in force on the entire Unit Area?

"13. Will distribution of production from the School Board Sand to the tracts overlying that sand interrupt prescription on mineral and royalty in-

[illegible] which are not otherwise receiving any payments or being thereby exercised.

14. In the event of loss of interest on any tract overlying the School Board Sand now will it be possible to translate that loss insofar as the School Board Sand is concerned into a percentage interest in the entire unit as required by the agreements.

15. The above problems or questions are serious beyond doubt in each of them and to allow the settlement of the Court of Appeals would lead to an irreparable inequitable result.

Since leases may be exchanged [illegible] one another in a like equitable [illegible] would not be given a construction that will [illegible] a hardship on the [illegible] which may be avoided without [illegible] the intention [illegible] the extension of the agreement [illegible] Louisiana Gas & Fuel Co. [illegible]

[illegible]

[illegible]

Syllabus, Ascension Red Cypress Co., Ltd. v. New River Drainage Dist., 149 La. 764, 90 So. 165.

"* * * the general rule of law is that the intent must be gathered from the language of the instrument itself, and the contract should be enforced unless such enforcement would lead to absurd consequences. R.C.C. art. 1945, par. 3." Lama v. Manale, 218 La. 511, 50 So. 2d 15, 23 A.L.R. 2d 1312.

"It is elementary that in the interpretation of a contract the court must give legal effect to the instrument according to the true intent of all the parties, and such intent is to be determined by the words used therein, without the aid of extrinsic evidence, when these are clear and explicit and lead to no absurd consequence. Revised Civil Code, Article 1945; * * *." Gulf Refining Co. v. Garrett, 209 La. 674, 25 So. 2d 329.

"Where a contract is capable of construction in accordance with justice and fair dealing, the court will adopt such construction, instead of one entailing loss to a party to the contract. Civil Code, art. 1951. * * *" Terrell v. Alexandria Auto Co., Inc., 12 La. App. 625, 125 So. 757.

"We know that a contract is the law between the parties and that they are bound by their agreements regardless of harmful consequences, provided the agreement is not contra bones mores or in violation of some prohibitory law. However, where the issue is as in the instant case—what are the terms of the verbal agreement—the fact that informed and experienced persons do not usually and customarily bind themselves to unjust and unreasonable obligations is a serious factor that must

be taken into consideration in determining that question." Oil Field Supply & Scrap Material Co. v. Gifford Hill & Co., 204 La. 929, 16 So. 2d 483, 484.

"* * * The intention of the parties is of paramount importance and must be determined in accordance with plain, ordinary and popular sense of the language used in the agreement and by giving consideration on a practical, reasonable and fair basis to the instrument in its entirety. * * *" McKinney v. American Security Life Insurance Co., La. App., 76 So. 2d 630.

"Article 1945 of the Civil Code provides that agreements have the effect of law upon the parties, who alone can abrogate or modify them, and that the courts are bound to give effect to all contracts according to the true intent of the parties when the language is clear and leads to no absurd consequences. Conformable with this principle, which is also stated in Article 1901 of the Code, this Court has many times observed that it is not within its province to alter or make new contracts for the parties, its duty being confined to the interpretation of the agreements the parties have made for themselves, and, in the absence of any ground for denying enforcement, to render them effective. Moriarty v. Weiss, 196 La. 34, 198 So. 643; Texas Co. v. State Mineral Board, 216 La. 742, 44 So. 2d 841." Stack v. De Soto Properties, 221 La. 384, 59 So. 2d 428.

9. Guided by the above jurisprudence and codal interpretations, as well as a study of the Erath Agreements the pertinent articles of which are set out in the opinion of the Court of Appeal, 145 So. 2d 383, it be-

comes obvious that the trial court and the Court of Appeal were correct in finding that:

> "'The entire purport of the agreements was and is to insure for each landowner the value of the minerals in place under his land, then known to exist *and to be discovered thereafter below 8000 feet.*'" (145 So. 2d p. 788) (Emphasis ours.)

From the foregoing finding, it follows that the parties to the Erath Agreements intended that production from any sand, whether it be then existent or discovered in the future, was to be attributed to the whole of the Unit Area; otherwise, the interpretation of the agreements would be unreasonable and the intentions of the parties would be negated.

It is manifest from a study of the record that the parties to the Erath Agreements were experienced and informed persons who contemplated justice and fair dealing with one another; they did not, and could not have contemplated independent units within a unitized area such as the Erath Field. To interpret the agreements as providing that production should be attributed to anything other than the whole would lead to absurd and inequitable consequences never intended.

Production and costs are interrelated and must be determined by experts in those fields; costs are allocated to and associated with production. Where as in the present case a unitized field exists and production is general and cumulative, costs are to be proportionate according to formulas adopted by experts and agreed upon by the parties.

As to the division of royalties, an examination of the agreements set forth in the Court of Appeal Decision discloses that the parties thereto intended that each would

receive his fair and equitable share of the products recovered.

It is pertinent here to observe that Relator Texaco Inc. states in brief:

> "We respectfully submit that the judgment of the Court of Appeal to the extent that it awards production from the School Board Sand, and any other unitized sand later encountered, to the overlying tracts is clearly violative of the Erath Agreements, and should be reversed and set aside, and, in turn, judgment should be rendered herein:
>
> "(1) decreeing that the recalculated equities for the entire field as reflected by Revised Exhibit D govern production of Unitized Substances from the Erath Unit for all time, including production from the named sands, the School Board Sand and any other unitized sand as may be later encountered within the Unit Area.
>
> "Alternatively:
>
> "(2) decreeing that the equities for the entire Recycling Unit are to be determined by adding the School Board Sand to the equities shown on Revised Exhibit D, and making such adjustment in the tract equities for the field as will result from allocating to the tracts overlying the School Board Sand the increased equity *in the unit* represented thereby; and
>
> "(3) decreeing that the same method of recalculation will apply to any other unitized sand as may hereafter be encountered within the Unit Area."

It is also pertinent to note that Vermilion Parish School Board states in brief:[5]

"ALTERNATIVE SUGGESTION AS TO DISTRIBUTION OF SCHOOL BOARD LAND PRODUCTION

> "Appellee suggests, as an alternative method for distributing the School Board sand production, that all equities be recalculated by using the percentages shown on revised Exhibit 'D' and in making such unit-wide adjustments as will result from adding the value of the total mineral content of the School Board sand to the total mineral content and value of the unit and crediting the tracts overlying the School Board sand with the increased equity represented thereby. * * *"

[10] The adoption of the alternate plan seems to be the equitable and reasonable solution to this controversy without working a hardship upon the parties. We therefore find that a reasonable distribution for the equities derived from the School Board Sand would be a recalculation o fall equities by using the percentages shown on Revised Exhibit D, and making such unit-wide adjustments as would result fro madding the value of the School Board Sand to the total unit valute and crediting the overlying tracts with the increased equity represented by that sand.

For the reasons assigned, the judgment of the Court of Appeal, Third Circuit, is reversed and set aside, insofar as it affirms the judgment of the trial court with respect

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5. Phillips Petroleum Company (Applicant in No. 46,444), Humble Oil & Refining Company (Applicant in No. 46,446), Grace Goldston Barber, et al. (Applicants in No. 46,447), and Tidewater Oil Company (Applicant in No. 46,450) have joined with Texaco Inc.; John L. Abercrombie, et al., have joined with Vermilion Parish School Board, et al. In view of the foregoing, one decree will suffice.

to the royalties herein concerned; insofar as it pertains to matters not treated herein because of our limited review, the judgment of the Court of Appeal is not disturbed.

It is now ordered and decreed that the equities for the entire Recycling Unit are to be determined in accordance with the alternate plan, supra, by adding the School Board Sand to the equities shown on Revised Exhibit D, and making such adjustment in the tract equities for the field as will result from allocating to the tracts overlying the School Board Sand the increased equity in the unit represented thereby. It is further ordered that this same method of recalculation apply to any other unitized sand as may hereafter be encountered within the Unit Area.

All costs to be paid by petitioner, Texaco Inc., Unit Operator of the Erath Unit.

SUMMERS, J., recused.

COTTON VALLEY UNITIZATION
AND
PRESSURE MAINTENANCE AGREEMENT

STATE OF LOUISIANA
PARISH OF WEBSTER

KNOW ALL MEN BY THESE PRESENTS: That

THIS AGREEMENT is hereby made and entered into by and between the owners of certain oil, gas and mineral leases covering lands in the Cotton Valley Field, Webster Parish, Louisiana, and such other owners of lands, minerals, royalties, overriding royalties, in lieu royalties, oil payments, gas payments, or of rights of any nature in or to the oil, gas or other hydrocarbons within said field, as may become parties hereto.

WITNESSETH:

WHEREAS, for the purposes of more properly conserving the resources of said common oil, gas and other hydrocarbon field, pool or reservoir, and for the prevention of underground and surface waste, it is in the public interest that there should be a unit plan of development and operation to promote economical and efficient management, the maximum conservation and recovery of oil, gas and other hydrocarbons that may be produced from said Cotton Valley Field without waste, and a fair apportionment of the benefits involved among the parties entitled thereto.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements hereinafter contained, the parties hereto and the parties hereto consenting agree severally and among themselves as follows:

DEFINITIONS

For all purposes of this agreement, the terms herein used are defined as follows:

COTTON VALLEY FIELD is hereby limited and defined as that portion of the domal geological structure

centering near the southeast corner of Sec. 22, Twp. 21 N., Rng. 10 W., Webster Parish, Louisiana, which has been, is now or may become productive of oil, gas or other hydrocarbons.

TRAVIS PEAK FORMATION is hereby defined as the strata penetrated by The Ohio Oil Company-Holloway well No. 6, located in the center of the NE¼ of SW¼, 23-21-10, between the depths of 5,500 feet and 6,718 feet; and the BASE OF THE TRAVIS PEAK IS a formational boundary line approximately five hundred feet above the top of the Bodcaw Sand.

PARDEE SAND is hereby defined as the strata penetrated by the Stanolind Oil & Gas Company-Pardee well No. 1 located in the center of the SW¼ of NE¼, 36-21-10, between the depths of 8,611 feet and 8,630 feet.

"D" SAND PARTICIPATING AREA is hereby defined and fixed as that portion of all sands between the base of the Travis Peak Formation and the base of the "D" Sand within the Cotton Valley Field, circumscribed by the dashed line on the map annexed hereto and made a part hereof as "Exhibit A", and all of governmental forties lying within said "D" Sand Participating Area shall be considered as containing exactly forty acres, said lands and the leasehold ownerships thereof being particularly described in "Exhibit B" attached hereto and made a part hereof.

BODCAW SAND PARTICIPATING AREA is hereby defined and fixed as that portion of the Bodcaw Sand within the Cotton Valley Field circumscribed by the dotted line shown on said "Exhibit A", and all governmental forties lying within said Bodcaw Sand Participating Area shall be considered as containing exactly forty acres said lands and the leasehold ownerships thereof being the same as the lands and leasehold ownerships set out in said "Exhibit B" and in addition thereto the lands

and leashold ownerships as particularly described in "Exhibit C" attached hereto and made a part hereof.

OTHER PARTICIPATING AREA is hereby defined and fixed as each separate formation below the base of the Travis Peak formation, other than the Bodcaw and "D" Sands, within the Cotton Valley Field which may now be or hereafter become productive of oil, gas or other hydrocarbons, and the extent of each such Other Participating Area shall be coincidental in area with the Bodcaw Sand Participating Area as same exists at the time of commencement of production from such other formation.

PRODUCTION UNIT is hereby defined as that acreage, not to exceed eighty acres, within the Cotton Valley Field, but outside one of the participating areas as defined herein, allocated by the Operator or included in his allocation to the Unit accepted by the Department of Conservation as the unit for production of a well completed thereon outside such participating area but in the same producing formation.

The term UNITIZED SUBSTANCES shall mean all liquid and gaseous hydrocarbons within the Bodcaw Sand Participating Area, the "D" Sand Participating Area and any Other Participating Area, as the same may now be fixed or subsequently fixed or enlarged.

OPERATOR is hereby defined as any owner of the right in whole or in part, to search for and produce oil, gas or other hydrocarbons within the Cotton Valley Field, whether such right be derived by the Ownership of the entire title free of lease, or by oil, gas and mineral leases, or by any other species of agreement conferring such right.

ROYALTY OWNER is, for convenience, defined as any owner who, subject to an Operator's right to search for and produce oil, gas or other hydrocarbons, owns land;

mineral rights, royalties, overriding royalties, oil payments, gas payments or other rights in and to oil, gas or other hydrocarbons, in the Cotton Valley Field.

OPERATING RIGHT is hereby defined as the right of an Operator derived in any manner set forth above to search for and produce oil, gas or other hydrocarbons in the Cotton Valley Field.

ARTICLE I

All oil, gas and other hydrocarbons within each separate participating area, as the same may now be fixed or subsequently fixed or enlarged, are, as to each such separate participating area, hereby unitized, and the lands containing same are hereby pooled and communized.

ARTICLE II

All Unitized Substances produced from each participating area, whether from the Bodcaw Sand Participating Area, or the "D" Sand Participating Area, or each Separate Other Participating Area, except such of said Unitized Substances as may be used in any participating area for production or development purposes or for repressuring or re-cycling, shall, as to each such separate participating area, be apportioned among and allocated on an acreage basis to the several tracts of land comprising such participating area, i.e., each such tract shall have allocated to it such percentage of such production as its acreage bears to the total acreage in such participating area; provided, however, that the Bodcaw Sand Participating Area and the "D" Sand Participating Area shall be operated as if one participating area, and all production and expenses, whether as to one participating area or the other of said participating areas, or both, shall be allocated seventy-five per cent thereof to the Bodcaw Sand Participating Area and twenty-five per cent to the "D" Sand Participating Area; and provided further that not-

withstanding such allocation as to gas, no Operator or Royalty Owner shall have the right to sell, handle, use or dispose of the gas produced from any participating area, but the Operators Committee is hereby authorized and empowered as the agents of all Operators and Royalty Owners, individually and collectively, to contract for and enter into gas sales agreements for the mutual benefit of the Operators and Royalty Owners in accordance with their respective acreage interests.

After said production has been so allocated, each Operator shall be separately liable for and shall pay all royalties which such Operator may be obligated to pay on account of his tract, in accordance and compliance with the respective leases or other contracts covering such respective tracts, based, however, on an assumed production in the amount of the Unitized Substances allocated under this agreement to such tract. Permission is hereby granted to the Operators Committee by all parties hereto to use any Unitized Substances produced from any participating area for production and development purposes and for repressuring and re-cycling, or any of said purposes; provided, however, that as far as efficient operations will permit no participating area shall have returned to its sand more than the amount of Unitized Substances produced therefrom, less that amount of said substances used in or for such participating area for development and operating purposes. No royalties shall be due or payable on any Unitized Substances produced from any participating area and used for any of the purposes last enumerated, nor shall any oil payments, gas payments, overriding royalties or similar interests be computed or due on such production.

Each party hereto, whether Operator or Royalty Owner, shall be liable for all severance, production or other similar taxes levied by the State, or any lawful taxing authority, on account of ownership, severance, pro-

duction, or sale of the Unitized Substances allocated to his or its tract or tracts; provided, however, such taxes shall be paid by the Operators Committee for the account of the party liable and the amount of such taxes on production allocated to each tract shall be charged to and collected from the Operator thereof; it being further understood that each Operator shall charge to and collect from its respective Royalty Owners the full amount of such taxes which have been paid for the account of the Royalty Owners liable therefor by deducting the amount of said taxes from the royalty due to said Royalty Owners.

ARTICLE III

Should there be formations below the base of the Travis Peak formation other than the Bodcaw Sand and the "D" Sand which are hereafter proved productive of oil, gas or other hydrocarbons within the geographical confines of the Bodcaw Sand Participating Area as the same may exist at the time of commencement of production from such other formation, then in such event there shall be a new participating area for each such other producing formation which shall be coincidental in area with the Bodcaw Sand Participating Area as same exists at the time of commencement of production from such other formation. Each such participating area has hereinbefore been defined as "Other Participating Area." It is agreed that the Davis Sand constitutes an Other Participating Area, but that for the purposes of this agreement there shall be no participating area for production from the Lower Bodcaw Sand, sometimes known as the Pardee Sand, said production being particularly covered by stipulation in Article V; provided, however, that there shall be as many Other Participating Areas as there may be productive non-connected formations below the base of the Travis Peak formation and not included within the Bodcaw or "D" Sands.

ARTICLE IV

There are certain wells located within the Cotton Valley Field, but outside of the Bodcaw Sand Participating Area and the "D" Sand Participating Area, respectively, and said wells are now producing with the gas a mixture of liquid hydrocarbons at a gas-oil ratio of not more than ten thousand cubic feet of gas to each barrel of said liquid hydrocarbons from the Bodcaw Sand or from the "D" Sand, said wells and the operators thereof being fully set out in "Exhibit D" attached hereto and made a part hereof, and in addition to said listed wells other wells may be completed in the Bodcaw Sand or the "D" Sand in the Cotton Valley Field, but outside of the Bodcaw Sand Participating Area and the "D" Sand Participating Area, respectively, and produce with the gas a mixture of liquid hydrocarbons at a gas-oil ratio of not more than ten thousand cubic feet of gas to each barrel of said liquid hydrocarbons from the Bodcaw Sand or from the "D" Sand.

As an essential part of this agreement the Operators in the Bodcaw Sand Participating Area and the "D" Sand Participating Area, through the Operators Committee, shall construct or cause to be constructed or cause to be made available for use a gas gathering line to the seperator at or near each such well, and the operators of said wells agree and obligate themselves as to each such well that the gas, but not the oil or said liquid hydrocarbons, produced therefrom, except such amount thereof as is used as fuel for such operator's drilling, producing and lease operations in the Cotton Valley Field, shall be delivered at five hundred pounds per square inch gauge pressure or such higher pressure as may be commensurate with efficient operating practices of such wells into said line, and such gas shall be received by the Operators Committee; provided, however, that the Operators Committee shall not receive in any one day from any well referred

to in the first paragraph of this Article IV a volume of gas, expressed in cubic feet, in excess of thirty million divided by the total number of all such wells; and provided, further, that each operator of any such well agrees that all gas produced therefrom in excess of the sum of (1) the amount received by the Operators Committee, determined as above provided, plus (2) the amount of such gas as is used as fuel for such operator's drilling, producing and lease operations in the Cotton Valley Field shall, by such operator, be delivered to the Operators Committee for return to the sand from which produced, said operator to pay a compression charge of actual cost on that volume of gas. All proceeds derived from the sale of such gas, including royalty on the gasoline content thereof, and all proceeds derived from the sale of all liquid hydrocarbons obtained from said gas, and all proceeds derived by the sale of gas, including royalty on the gasoline content of such gas, from the Bodcaw Sand Participating Area and the "D" Sand Participating Area shall be allocated seventy-five per cent thereof to the total acreage comprising the Bodcaw Sand Participating Area and the acreage of the Production Units on which the wells herein mentioned are producing from the Bodcaw Sand, and distributed on an acreage basis, and shall be allocated twenty-five per cent to the total acreage comprising the "D" Sand Participating Area and the acreage of the Production Units on which the wells herein mentioned are producing from the "D" Sand, and distributed on an acreage basis.

Whenever such well or wells produce with the gas a mixture of liquid hydrocarbons at a gas-oil ratio in excess of ten thousand cubic feet of gas to each barrel of said Field, but outside of the Bodcaw Sand Participating Area liquid hydrocarbons, or if other wells are completed in the Bodcaw Sand or the "D" Sand in the Cotton Valley and the "D" Sand Participating Area, respectively, and produce with the gas a mixture of liquid hydrocarbons at

a gas-oil ratio in excess of ten thousand cubic feet of gas to each barrel of said liquid hydrocarbons, then each such well, as to the particular sand from which it is producing and the production acreage allocated to such sand, shall without further formality come under the terms of this agreement and the production therefrom shall be unitized, and said Production Unit, with an appropriate acreage factor hereinafter determined, shall be pooled and communized with the production and acreage in such participating area as of the first day of the calendar month succeeding the happening of such event, and thereafter the production from such well and Production Unit shall be handled in the same manner as all other participating acreage within the particular participating area, and the payments stipulated in this article for gas production therefrom shall thereafter cease, provided the operator of such well, upon the happening of such event, may cease producing such well as then completed and shall, thereafter, have a reasonable time, not to exceed sixty days within which to commence operations, to recomplete such well in the same formation or abandon such well as a producer in said sand or formation after making a test to determine the acreage factor of the Production Unit for its inclusion in that particular participating area, and the operator of such well may likewise thereafter recomplete same in any other formation below the Travis Peak formation and not included within any participating area in an effort to produce liquid hydrocarbons at a gas-oil ratio of not more than ten thousand cubic feet of gas to each barrel of liquid hydrocarbons, or to improve or increase the volume of production of such well. Should such effort to recomplete result in production of liquid hydrocarbons of a gas-oil ratio of not more than ten thousand cubic feet of gas to each barrel of liquid hydrocarbons, then and in such event such well and the Production Unit on which same is located shall not become a part of that participating area until the gas-oil ratio

shall exceed ten thousand cubic feet of gas to one barrel of liquid hydrocarbons produced, and all of these provisions shall be construed in accordance with the following:

(a) Each such well, together with casing, tubing, and top of well connections, shall have an original agreed value of $100,000.00 of completed with casing of seven inches or more, and $75,000.00 for each well if the final string of casing is less than seven inches, outside diameter.

(b) The amount stipulated in paragraph (a) above shall be decreased at the rate of .833 per cent for each month after the effective date of this contract covering the period during which said well may have produced with the gas a mixture of liquid hydrocarbons at a gas-oil ratio of not more than ten thousand cubic feet of gas to a barrel of said liquid hydrocarbons.

(c) Said well shall be tested in the manner prescribed by the U.S. Bureau of Mines, in Monograph No. 7, and if same is capable of producing ten million cubic feet of gas per day with two thousand pound back pressure at the well head on a twelve hour test, said well shall be considered as a standard average well; otherwise, after determination of the balance due for said well by paragraphs (a) and (b) there shall then be deducted seven and one-half per cent from said amount for each million cubic feet of gas less than ten million cubic feet that said well is able to produce.

(d) From the amount determined by the above calculations, each well shall be further discounted one per cent for each one per cent expecting the first two per cent of salt water production, the later percentage being computed on total fluid production.

The operator of such well shall have its value as above determined credited to said operator and paid in the manner provided in Article XII.

The entire Production Unit, not to exceed eighty acres, on which said well is located shall become a part of the particular participating area applicable thereto with an acreage factor, which shall not apply to any of the Other Participating Areas, but if the well on said Production Unit is capable of producing ten million cubic feet of gas per day with a two thousand pound back pressure at the well head on a twelve hour test and not exceeding two per cent salt water production, same shall be considered as one hundred per cent effective acreage; otherwise, the acreage allocated to such well for all purposes of participating in such particular participating area shall be depreciated seven and one-half per cent for each million cubic feet of gas less than ten million cubic feet said well is able to produce, and likewise, a further depreciation of one per cent for each one per cent of salt water production, excepting the first two per cent.

The owner of the Operating Rights on such Production Unit shall pay to the Operators Committee, for the account of the respective Operators in the participating area which is so enlarged to include said Production Unit, the sum of $75.00 per acre for the acreage inclusion within the Bodcaw Sand Participating Area and $25.00 per acre for the acreage inclusion within the "D" Sand Participating Area, less one per cent of said amount per acre per month from the time the recycling or pressure maintenance plant is in actual operation as such operator's part of the investment in said plant and equipment, subject to the acreage factor, if any, as a reduction in said payment.

ARTICLE V

There are certain wells located in the Bodcaw Sand Participating Area, but outside of the "D" Sand Partici-

pating Area, the production from said wells being from the Pardee or Lower Bodcaw Sand, said wells and the operators thereof being as follows:

OPERATOR	FARM	WELL No.	LOCATION
Stanolind	Pardee	1	SW¼ of NE¼, 36-21-10
Stanolind	Pardee	4	SE¼ of SE¼, 25-21-10
Stanolind & Delaney	Pardee-Coffee	1	NE¼ of SW¼, 36-21-10
Stanolind & Hunt	Pardee-Coffee	1	NE¼ of NE¼, 36-21-10
Woodley	Couch	1	NW¼ of SW¼, 36-21-10
Midstates	Giddens	1	SW¼ of SW¼, 30-21- 9

It is particularly understood and agreed by all parties hereto or who consent hereto that the Operators of said wells agree and obligate themselves as to each of said wells that the gas, but not the oil, produced therefrom shall, at the option of the Operators Committee, and from time to time upon demand of the Operators Committee, be delivered into the gas gathering line referred to in Article IV above. The Operators and Royalty Owners of such wells acknowledge that said deliveries are made in consideration of their acreage inclusion within the Bodcaw Sand Participating Area and said Royalty Owners do hereby waive any additional royalty for such deliveries, it being stipulated that said well or wells shall not be considered as pooled or communized with ony participating area, except as to the gas above set forth, although the overlying Bodcaw Sand is at all times unitized with the Bodcaw Sand Participating Area. There shall be excepted from said deliveries sufficient gas for Operator's drilling, producing and lease operations and repressuring the Pardee Sand in the Cotton Valley Field, and tender of all other gas to the Operators Committee at the wells shall constitute deliveries for all purposes hereof, but such deliveries shall be made free of all costs, liens, encumbrances or claims of title, and the gas shall be at the highest pressure commensurate with efficient operating practices. Further, the Operator of said well or wells

may at his option and discretion (1) abandon said well or wells or (2) recomplete same in the "D" Sand as a well producing with the gas a mixture of liquid hydrocarbons at a gas-oil ratio of not more than ten thousand cubic feet of gas to each barrel of said liquid hydrocarbons or (3) negotiate with the Operators Committee for the sale of said well; provided, however, that if such well is recompleted in the "D" Sand under option (2) above, then the same shall be subject to all of the provisions of Article IV hereof, with the exception that the Operator may, in the event such well becomes the subject of sale under said Article IV and the Operator is unwilling to accept the credit to his account stipulated in said Article IV, abandon and salvage said well or negotiate with the Operators Committee for the sale of the same at a different credit to his account than that determined under the provisions of Article IV hereof.

ARTICLE VI

The sole right to drill in search of oil, gas or other minerals within the geographical confines of the Bodcaw Sand Participating Area, the "D" Sand Participating Area and the Other Participating Areas shall be vested in the Operators Committee, subject, however, to the following exceptions:

(a) That nothing herein contained shall affect any Operator's rights to drill for and produce oil, gas or other minerals above the base of the Travis Peak formation.

(b) The Operator owning a tract included within the geographical confines of the Bodcaw Sand Participating Area, but not within the "D" Sand Participating Area, may drill said tract to the base of the "D" Sand, or the Pardee Sand, and any well drilled and completed in the "D" Sand, or the Pardee Sand, under this exception may be operated and pro-

duced free of all of the terms of this agreement, subject only to the provisions of Article IV, or Article V, respectively.

(c) The Operator of a tract not within the geographical confines of any participating area may drill the same to any depth, and any well so drilled may be operated and produced free of all of the terms of this agreement, subject only to the provisions of Article IV, or Article V, whichever is applicable.

ARTICLE VII

In order that any participating area may be extended or enlarged, other than as provided in Article IV, the parties hereto, both Operators and Royalty Owners, do by these presents fully authorize and empower the Operators Committee and the Royalty Owners Committee, by their joint action, to negotiate, enter into, execute and perform by and with the owners of Operating Rights and the Royalty Owners of acreage outside such participating area known or reasonably estimated to be productive of the Unitized Substances in commercial and paying quantities from the same sand or formation, contracts and agreements, whereby under such terms and conditions as to the said committees seem advisable, the various participating areas established by this agreement or as they then exist may be respectively extended and enlarged and such outside acreage thereby become a part or parts of such particular participating area, or establish such contractual relationships with respect to such outside acreage as to said committees may seem proper, whether such outside acreage actually becomes a part of any particular participating area, or not.

In the event of enlargement or extension of any participating area in accordance with the provisions of this article, a new schedule of production allocation conformable to the enlarged participating area shall be fixed

by said committees; provided, however, that apportionments or allocation of production or adjustment of accounts by reason of any enlargement of any participating area shall not be made retroactive. No land once included within a participating area shall thereafter be excluded therefrom.

ARTICLE VIII

There is hereby created a Royalty Owners Committee to function in connection with the matters stipulated in Article VII, and when each royalty owner executes this agreement or a ratification hereof, said royalty owner shall designate and appoint as his agent and representative one of the following persons:

NAME	ADDRESS
D. W. Stewart, Jr.	Minden, Louisiana
Frank B. Treat	Minden, Louisiana
H. G. Gray	Minden, Louisiana
T. Crichton, Jr.	Minden, Louisiana
Paul L. Miller	Couchwood, Louisiana
Warren Cox	Cotton Valley, Louisiana
R. M. Coyle	Cotton Valley, Louisiana
A. J. Hodges	Shreveport, Louisiana
O. C. Hathaway	Shreveport, Louisiana
A. H. Southern	Haynesville, Louisiana
A. L. Burford (Bodcaw Lbr. Co.)	Texarkana, Arkansas

all of whom shall compose the initial membership of said committee and shall continue in office so long as they remain Royalty Owners unless removed in accordance with the terms and provisions hereof. The Royalty Owners Committee shall act upon and determine the matters properly coming before it under the terms hereof by a majority vote and such vote shall be binding upon all of the Royalty Owners. Each member of said committee shall have a vote in the proportion which the aggregate acreage interest of the Royalty Owners whom he represents bears

to the aggregate acreage in all participating areas. Said Royalty Owners Committee shall select a chairman from its own membership and shall adopt such rules and regulations for the conduct and performance of its duties as are not inconsistent with the terms of this agreement. The Royalty Owners Committee shall keep and preserve a record of its proceedings and determinations, which said records shall at all times be open for inspection by any of the Royalty Owners and by all of the Operators.

All notices required to be given to the Royalty Owners Committee hereunder shall be deemed to have been given if properly mailed to said commitee at P. O. Box 625, Minden, Louisiana, which address may from time to time be changed by said Royalty Owners Committee so advising the Operators Committee.

There shall be a vacancy upon the death, disqualification, resignation, failure or refusal to act, of any member of said Royalty Owners Committee and likewise when any member of said committee does not represent at least three Royalty Owners other than himself. Should there be a vacancy in the membership of said committee, then all Royalty Owners who had previously appointed such member as their agent, shall thereupon designate some other person as their representative or appoint one of the other members as their agent; provided, however, that for the interim during which said Royalty Owner has not designated an agent on said Royalty Owners Committee, he shall be represented by a member of said committee who shall be designated by the committee and who shall represent said Royalty Owner to the same extent as if designated by him; and provided, further, that there shall never be more than eleven members of the Royalty Owners Committee.

Members of the Royalty Owners Committee shall at all times serve without compensation whatever, but in-

cidental expenses necessarily incurred for the keeping of books, records, proceedings, and other charges, not to exceed $25.00 per month, shall be paid by the Operators, as an operating expense.

ARTICLE IX

Nothing in this agreement contained shall be construed as imposing upon any Royalty Owner any obligation to pay for any development and operation expense, unless by the terms of pre-existing agreements such obligation is imposed upon such Royalty Owner.

ARTICLE X

All development and operations for the Unitized Substances shall be conducted and managed by and at the expensse of the Operators, through the Operators Committee, in accordance with the terms and conditions of this agreement, and shall be planned, co-ordinated and executed by the said committee which shall consist of a representative of each of the then Operators. Any member appointed to serve on the Operators Committee may be changed from time to time by his principal's appointing a new member and by notifying the other members of the Operators Committee and the other principals in writing of such action.

The Operators Committee shall be charged with the duty of planning, co-ordinating and executing the development and operations within all participating areas for the Unitized Substances, and is hereby authorized, subject to the terms hereof, to do any and all things necessary and convenient for carrying out the provisions and spirit of this agreement. Said Operators Committee shall act upon and shall determine all matters coming before it by a maority vote of acreage, which must be concurred in by the representative or representatives of not less than seven separate Operators, and which vote shall be binding

upon the Operators. Each member of the Operators Committee shall have a vote in the proportion which the aggregate acreage interest of his principal bears to the aggregate acreage in all participating areas. Said Operators Committee shall select a chairman from its own membership and shall adopt such rules and regulations for the conduct and performance of its duties as are not inconsistent with the terms of this agreement. The Operators Committee shall keep and preserve a record of its proceedings and determinations, which said records shall at all times be open for inspection by any of the Operators.

Any notices required hereunder to given to said Operators Committee shall be deemed to have been validly given if properly mailed to said committee at Post Office Box 1129, Shreveport, Louisiana, which address may be from time to time changed by said Operators Committee by notifying in writing each Operator and the Royalty Owners Committee.

ARTICLE XI

Plans have heretofore been considered by the Operators in reference to the installation of a recycling, pressure maintenance and liquid hydrocarbon extraction and processing plant for the return to the reservoir or recycling of some or all of the gas which may be produced from the participating areas above mentioned. The Operators Committee is hereby directed forthwith to continue the consideration of such plans and to work towards the completion of same, and, as soon as practicable, to arrange for the construction of a modern recycling, pressure maintenance and liquid hydrocarbon extraction and processing plant, designed, constructed and maintained so as to comply with the best accepted engineering practices, adapted to the most efficient, practical and economic operation, and the installation therewith of all equipment necessary to the greatest practicable economic and efficient recovery

and saving and the conversion into marketable products of the liquid and liquefiable hydrocarbons from the gas and the liquid hydrocarbons put through such plant, the cost of which the Operators who sign this agreement agree to pay in the proportion that they share in the original allocation of production from the Bodcaw Sand Participating Area and "D" Sand Participating Area under Article II hereof. Such payments shall be made direct to the Operators Committee within thirty days after assessment of costs by the Operators Committee, provided, however, that the Operators Committee may, by appropriate action, allow such payments to be made by installments, in which event each Operator shall pay the appropriate percentage of each installment to the end that all Operators shall contribute towards each installment ratably, and said plant and equipment shall be so owned by said Operators notwithstanding same may be used for production from Other Participating Areas.

The Operators, through the Operators Committee agree and bind themselves to commence or cause to be commenced the construction and installation of the recycling, pressure maintenance and liquid hydrocarbon extraction and processing plant heretofore referred to within a reasonable time after the effective date hereof and to proceed with due diligence with said construction and installation until such plant has been put into operation, unless prevented from the commencement or prosecution of construction and installation by force majeure. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, wars, blockades, insurrections, riots, disturbances, riots and restraints of government and people or other causes which by the exercise of due diligence Operators are unable to prevent or overcome.

Operators further agree

pletion, in such manner as to promote the efficient management, conservation and recovery of oil, gas and other hydrocarbons with due regard to both interests of Operators and Royalty Owners.

The committee shall not inject gas in the Bodcaw Sand or the "D" Sand through any well in which the top of the Bodcaw Sand occurs at a sub sea depth greater than eight thousand feet, without a vote of at least eighty per cent of the Unit Operators.

This contract shall be binding from the effective date hereof, notwithstanding said re-cycling, pressure maintenance and liquid hydrocarbon extraction and processing plant will not be operating nor completed at such date.

ARTICLE XII

As shown on "Exhibit E", attached hereto and made a part hereof, certain Operators are owners of the wells producing Unitized Substances from the Bodcaw Sand Participating Area or "D" Sand Participating Area, and it is agreed by and between the Operators that for the purposes of this agreement each of said wells, together with casing, tubing and top of well connections, exclusive, however, of separators, derricks, tanks and other surface equipment, shall be deemed to have a value of $100,000.00. In view of the fact that all of said wells will be dedicated to production or other use in connection with the production, re-cycling and repressuring of the Unitized Substances, all of the Operators hereby agree that each respective Operator owning one or more of said wells or an interest therein is entitled to receive out of the Unitized Substances the stated value of each well so owned, and therefore it is further agreed that eighty per cent of seven-eighths of the Unitized Substances allocable to each tract in the Bodcaw Sand Participating Area and "D" Sand Participating Area, as such Unitized Substances

are produced from and after the effective date hereof, shall be delivered to Operators thus owning said wells in the proportion that their respective ownership in the aggregate of such wells bears to the aggregate number of such wells, such percentage of said production to be delivered until the total agreed value of said wells shall have been liquidated through the delivery of such production to such Operators. The Operator so receiving such production agrees to receive the same as having a stipulated value at the time of allocation equal to the posted price then prevailing in the Cotton Valley Field for production of the same kind and quality.

ARTICLE XIII

Each Operator agrees to pay and discharge its proportionate part on a participating acreage basis, subject to the percentage adjustment between the Bodcaw Sand Participating Area and the "D" Sand Participating Area, all expenses of operation and development of each respective participating area. On or before the 15th day of each calendar month, the Operators Committee shall render to each Operator a statement reflecting the expenditures for the preceding calendar month. Each Operator shall, within fifteen days after receipt of said statement, pay to the Operators Committee his part of said expenses as reflected by said statement. Upon the failure of any Operator to make such payment within the time limited, the Operators Committee may retain possession of the Unitized Substances allocated to such Operator, and, if necessary, dispose of the same. In the event of such disposition, the proceeds thereof shall be used to liquidate such amount and the balance, if any, paid to said Operator.

Each Operator agrees to advance to the Operators Committee his proportionate part, determined on a participating acreage basis, of $50,000.00 upon the effective date of this agreement, such amount to be placed in the

treasury of the Operators Committee and credited to the account of the party so advancing same. The purpose of such advance is to create a working fund for the Operators Committee.

ARTICLE XIV

The Operators Committee is hereby directed, for and on behalf of and in the name of the Operators, as their interests may appear, to carry adequate Workmen's Compensation, Public Liability, Property Damage, Explosion, Fire and other necessary insurance.

ARTICLE XV

Insofar and only insofar as this agreement relates to the correlative rights of the Operators, each to the other, the same may be amended without the concurrence of the Royalty Owners; provided that no such amendment shall be in any manner abridge, modify or affect any rights of said Royalty Owners.

ARTICLE XVI

Each Operator represents that he or it is now and as of the effective date hereof will be the owner of the Operating Rights in connection with the tract or tracts described as owned by him on said "Exhibit B" and on said "Exhibit C", and hereby agrees to indemnify and hold harmless every other Operator now or hereafter a party hereto in the event such Operator so signing is not the owner of the rights to the extent shown on said "Exhibit C", and subject to the representations herein made, the effective acreage interest of such Operator in the Unitized Substances shall be permanently vested in such Operator irrespective of whether or not the Operators Committee shall perpetuate the title to such Operating Rights with respect to such tract or tracts.

ARTICLE XVII

When any of the physical properties jointly owned by the Operators in any participating area are no longer used or useful for the purposes of carrying out the provisions of this agreement, the Operators Committee shall salvage and dispose of the same and account to the Operators, on their then participating basis, for the net proceeds therefrom.

ARTICLE XVIII

Each Royalty Owner hereby grants to his respective Operator or Operators the right to sell the Royalty Owner's interest in the Unitized Substances at the price and on the same terms and conditions as such Operator sells his interest in said Unitized Substances, except gas which is covered by the terms and provisions of the respective leases, and the sale thereof shall be handled as set out in Article II. All royalty interests of every nature whatsoever shall be accounted for and paid on the basis of prices prevailing in the Cotton Valley Field for substances of like quality and character on the date of sale or purchase, in accordance with the royalty provisions of the respective lease contracts for oil, separated distillate, gas, gasoline and processed or manufactured products.

ARTICLE XIX

The liability of the parties Operators hereto shall always be several and not joint; and it is their intention to create the relationship of principal and agent between each of the Operators and the Operators Committee.

ARTICLE XX

The parties hereto or consenting hereto agree that this agreement shall not cancel or supersede the existing permits, leases, drilling and operating contracts, overriding royalty agreements, or other instruments affecting the

lands covered by this agreement owned or held by the parties subscribing or consenting hereto, and that the same shall continue in full force and effect to the extent that they or one or more thereof, are not in conflict with the provisions of or are modified by this agreement, but in case of such conflict the provisions of this agreement during its effectiveness shall govern and control, and such other agreements shall be and the same are hereby modified and amended accordingly.

ARTICLE XXI

It is further stipulated that any lease or contract subject hereto covering that property which is included within any participating area hereunder, shall not terminate or expire during the life of this agreement and that the amounts payable to the Royalty Owners under the provisions hereof shall entirely supersede and take the place of any lieu royalties or rentals payaable for delays in drilling or production or payable to keep any such lease in force without drilling or production. All Royalty Owners who are parties hereto or who later consent hereto, hereby agree, severally, each to the extent of his particular ownership or interest, to the inclusion of their lands hereunder, do hereby approve and adopt the terms of this agreement as applicable to said lands and interests, and agree as to only the lands which are included within any participating area hereunder that the drilling and development requirements of all such leases shall be deemed fully executed by the performance of the provisions of this agreement, and further agree that payment for or delivery of, whichever may be required under prior agreements, the Unitized Substances made upon the basis of production allocated under this agreement to the particular lands to which such rights or interests apply, regardless of actual production therefrom, shall constitute full performance of all such obligations to such Royalty Owners existing under such leases or other contracts, and production

from any part of any participating area shall be considered as production from each and every tract included therein.

ARTICLE XXII

This agreement shall be subject to all valid rules and regulations of any regulatory body having proper jurisdiction.

ARTICLE XXIII

Anything herein contained to the contrary notwithstanding, this agreement shall not be construed to affect or in any manner relate to interests in production from or rights relative to any formations above the base of the Travis Peak formation and shall in no manner modify or alter the rights of the parties hereto in reference to any agreements relating to production above the base of the Travis Peak formation.

ARTICLE XXIV

This agreement is executed with the specific purpose and intent on the part of each of the parties affected hereby and for a good, valuable and sufficient consideration inuring to each of them hereunder to acknowledge the mineral ownership of each and all of the parties to this contract, but only the mineral ownership of the parties to this contract, or who may become parties hereto, and only as to the lands covered by this contract so as to interrupt the running of the ten year liberative prescription of nonusage applicable under the law of Louisiana to mineral servitudes, and each monthly payment of the royalties and benefits provided for by this contract shall be considered and accepted by all parties as a new acknowledgment made with the purpose and intent of interrupting said prescription as to all servitudes.

ARTICLE XXV

Subject to the provisions of this Article XXV, this agreement shall be binding upon and inure to the benefit of the parties hereto or who later execute this agreement, or a ratification hereof, their respective heirs, administrators, executors, successors and assigns, irrespective of the failure of any Operators or Royalty Owners to execute or ratify the same. This agreement shall become effective upon the happening of the following two events:

(a) The execution or ratification hereof by the Owners of eighty per cent or more of the royalty interest, expressed in acres, in the Bodcaw Sand Participating Area; and

(b) Upon execution or ratification hereof by the Owners of eighty per cent or more of the Operating Rights, expressed in acres, in the Bodcaw Sand Participating Area.

If both of said events have not occurred by July 1, 1940, then on that date this agreement shall become null, void and of no effect. The Operators Committee, in the event this agreement becomes effective as above set forth, shall, before July 1, 1940, file a declaration in the Conveyance Records of Webster Parish, Louisiana, setting forth the date on which this agreement became effective, and which declaration shall be prima facie evidence of the facts therein stated. After the effective date hereof, this agreement shall remain in force and effect so long as any of the Unitized Substances can be produced in paying quantities from any part of the lands included within the then participating areas; provided, however, that after this agreement becomes effective, it shall become binding as to all parties subsequently executing the same, or a counterpart, or a ratification hereof, as of the first day of the month following such execution or ratification.

ARTICLE XXVI

The provisions of this agreement in regard to allocation of expenses, allocation of revenues, allocation of production, contribution of capital and repayment for the wells listed in "Exhibit E" are all based upon the assumption that the owners of all of the Operating Rights within the Bodcaw Sand Participating Area will either execute or ratify this agreement. If, when this agreement becomes effective, all of the Operating Rights within any particular participating area are not subject to this agreement, then the acreage not so subject to this agreement shall be deducted from the aggregate acreage in such participating area for the purposes of arriving at the above mentioned distributions and allocations. Any acreage within a participating area which is not subject to this agreement on the effective date hereof may nevertheless be made subject to this agreement if the owner of th Operating Rights on such acreage executes or ratifies this agreement within three months after the effective date hereof, provided that such acreage shall not have allocated to it any production or revenues until the calendar month following the date it is made subject to this agreement, and provided further that the owner of the Operating Rights shall pay to the Operators Committee his proportionate acreage part of the amounts to be advanced under Article XI and XIII hereof, and provided further that such operator shall be subject to the provisions of Article XII in reference to repayments for wells. If such operator owns any well described in "Exhibit E" hereof, such well shall be deemed to have the value set forth in said Article and appropriate adjustment shall be made with such operator in the manner set forth in Article XII.

ARTICLE XXVII

This agreement may be executed in any number of counterparts, and each such counterpart so executed

shall have the same force and effect as an original instrument and as if all of the parties to the aggregate counterparts had signed the same document.

IN TESTIMONY WHEREOF, the parties hereto have caused this agreement to be executed in the presence of the undersigned competent attesting witnesses on the date set opposite their signatures.

(Signatures and witnesses omitted)

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No. 694

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

HUNT OIL COMPANY and BODCAW COMPANY,
Petitioners,

vs.

MARATHON OIL COMPANY, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

BRIEF FOR MARATHON OIL COMPANY, RESPONDENT, IN OPPOSITION

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Shreveport, Louisiana, January 13, 1964.

LECOMTE, SHREVEPORT, LOUISIANA

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MAY IT PLEASE THE COURT:

The petitioners, Hunt Oil Company and Bodcaw Company, here seek review of a judgment of the United States Court of Appeals for the Fifth Circuit on writ of certiorari. Their petition is based on the premise that the Court of Appeals "has decided an important state . . . question in a way in conflict with applicable state . . . law."(1) In point of fact, however, the question decided

(1) Rule 19 1 (b), Revised Rules of the Supreme Court of the United States.

was not, in the sense of the Rules of this Court, important; neither was the question decided in conflict with any law of the State of Louisiana.

QUESTION PRESENTED

This case presents purely a question of interpretation of the Cotton Valley Unitization and Pressure Maintenance Agreement (the "Agreement"), the question being whether or not the Agreement by its provisions automatically extended the unitized "D" Sand Participating Area to include the separate North "D" Sand Pool.

STATEMENT

The Agreement defined an area termed the "'D' Sand Participating Area" by reference to a map annexed thereto and a particular description of the Area in governmental subdivisions, also annexed thereto.(2) The Agreement then unitized for cycling and production purposes the "D" Sand Participating Area, which was comprised of the lands underlain by the "D" Sand reservoir.(3) This reservoir had been discovered prior to 1940(4) and gas and liquid hydrocarbons have been produced from it ever since.

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(2) Definitions, Cotton Valley Agreement, Petitioners' Appendix, p. 86.

(3) Finding of Fact No. 3(a), Pet. App., p. 22; 205 F. Supp. 885 at p. 887.

(4) Finding of Fact No. 6(a), Pet. App., p. 25; 205 F. Supp. 885 at pp. 888, 889

Petitioners Hunt Oil Company and Bodcaw Company contended the Agreement meant, and that the parties to the Agreement intended, that the "D" Sand Participating Area should be extended to include the lands overlying another reservoir (the North "D" Sand Pool) discovered in 1953 and completely separated from the old reservoir by an impermeable barrier of shale and siltstone over a mile wide.(5) The District Court found from an examination of the Agreement(6) "that the parties did not contemplate the possibility of . . . the 'D' Sand Participating Area under the Agreement including more than one hydrocarbon pool or reservoir . . .", and also found,(7) among other things, that the Agreement had been construed by the parties to provide for the enlargement of any Participating Area "to include only lands containing pressure connected parts of the same hydrocarbon pool or reservoir as was included in the Participating Area under enlargement", further stating: "This construction is binding upon the parties".(8)

These findings were entered by the District Court after careful consideration of the evidence of fourteen witnesses, adduced during a trial occupying three days, relative to the factual background of the Agreement and

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(5) Finding of Fact No. 4, Pet. App., p. 24; 205 F. Supp. 885 at p. 888.

(6) Finding of Fact No. 6(d), Pet. App., p. 29; 205 F. Supp. 885 at p. 890.

(7) Finding of Fact No. 6(f), Pet. App., pp. 30, 31; 205 F. Supp. 885 at p. 891.

(8) Article 1956, Civil Code of Louisiana, cited in Pet. App., p. 5.

the manner in which it had been applied during the twenty years during which extensive and important business arrangements had been carried out under its provisions.

The United States Court of Appeals for the Fifth Circuit approved and adopted by reference the findings and conclusions of the District Court.(9)

ARGUMENT

From the foregoing it appears that petitioners are actually asking this Court to review the lower court's decision on a question of fact. In an attempt to render this less obvious, however, and to bring their petition for review on certiorari within the categories outlined in Rule 19 of the Rules of this Court, petitioners urge that the opinion of the Supreme Court of Louisiana in *Texaco, Inc. v. Vermillion Parish School Board*(10) sets up a rule of state law governing all contracts concerning unitization of oil, gas and other hydrocarbons (whatever the provisions of such contracts); that is, that all field unitization contracts, in order to avoid absurd and inequitable consequences, should include all later discovered reservoirs, and that the Court of Appeals has failed to apply this rule to the present case.

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(9) Opinion of Court of Appeals for the Fifth Circuit, Pet. App., p. 37; 321 F. 2d 702.

(10) 152 So. 2d 541, 244 La. 408.

The Question Decided In The Present Case Was Not Decided In The Texaco Case.

The Louisiana Supreme Court Did Not Pass on the Question of the Unitization of the Subsequently Discovered Sand.

The *Texaco* case, as submitted to the state District Court, involved two principal questions, (1) whether the disputed School Board Sand was unitized as a part of the Unit Area created by the Erath Agreements and (2) if so, the basis of participation of all parties to the Erath Agreements in production from that Sand. It is only the first of these questions which is analagous to the question argued in the present case, namely, whether the "D" Sand Participating Area established by the Cotton Valley Agreement was enlarged under the terms of the Agreement to include the subsequently discovered North "D" Sand Pool.

The opinion and findings of the state trial court, in the *Texaco* case, are quoted in full in the opinion of the Court of Appeal; and on the question of the inclusion of the School Board Sand in the Erath Unit Area, the trial court held:

> "'1. The School Board Sand as defined hereinabove is covered by the Erath Agreements, as amended, as are all sands below 8000 feet located beneath the Unit Area as delineated by said agreements and containing "unitized substances" defined in Article I(b) of said Erath Agreements, whether or not said sands and reservoirs were known or unknown at the time of the confection of such agreements."(11)

(11) Pet. App., p. 56; 145 So. 2d 383 at p. 391.

This finding of the state District Court was approved and affirmed, *sub silentio*, by the state Court of Appeal; for its entire opinion is devoted to the question of the proper division of the production from the School Board Sand among the parties to the Erath Agreements.

And the question of whether the School Board Sand was unitized by the Erath Agreements was not before the Louisiana Supreme Court at all. For in its order granting review of the decision and judgment of the Court of Appeal it is provided:

"* * * Writs were granted, limited to a review of these two questions:

"1. Whether royalties from the School Board Sand should be paid

"'a. On the basis of a recalculation of the equity of each tract in the whole Erath Unit, or

"'b. On the basis of a calculation of the percentage of equity of each tract shown on Plaintiff's Exhibit P-B to be lying in the Unit Area North of the fault line.

"'2. Whether the percentage of equity in all sands and reservoirs containing unitized substances not known and determined to be productive in June, 1944, which may hereafter be placed on production, are to be calculated according to judgment to be rendered herein.'"(12)

It inevitably follows, therefore, that the Louisiana Supreme Court's decision in the *Texaco* case did not interpret the Erath Agreements as to whether or not they unitized the School Board Sand. And, as we shall now demonstrate, the analagous question arising under the

(12) Pet. App., p. 72; 152 So. 2d 541 at p. 544; 244 La. 408 at p. 418.

Cotton Valley Agreement was the only question passed on here.

The Only Question Passed on in this Case was Whether or Not the Subsequently Discovered Reservoir was Unitized by the Cotton Valley Agreement.

It is, of course, obvious that the Federal courts in this case were interpreting and applying the Cotton Valley Agreement and the Louisiana courts, in the *Texaco* case, the Erath Agreements. The very considerable difference between the two, in respect of the question of extension to a newly discovered reservoir, may be judged from the relevant portions of the two contracts.(13)

The petitioners' suit depends entirely upon their assertion that the North "D" Sand Pool, under provisions of the Agreement, became a part of the "D" Sand Participating Area established by the Agreement, in which they had interests.

Petitioners urged in the District Court, and they flatly assert here, that the words of the Agreement were clear and explicit and led to their interpretation. But the District Court (Finding 5, Pet. App. p. 24) found to the contrary and (Finding 6, Pet. App. pp. 25-31) carefully documented its decision. It gave eight reasons for its interpretation of the Agreement and only one of these

(13) Cf. discussion of provisions of Erath Agreements and quotations therefrom by state District Court (Pet. App., pp. 46, 47) and Articles I and IV of Cotton Valley Agreement (Pet. App., p. 88 and pp. 91-95). A reference to the United States District Court's Findings 5 and 6, Pet. App., pp. 24, 25, 205 F. Supp. 885, pp. 888-892, will indicate the care and attention it gave to the interpretation of Article IV of the Agreement.

(Finding 6(g), Pet. App. p. 31) was that the petitioners' interpretation would lead to an inequitable result.

It thus appears: (1) The result of this suit depended entirely upon the interpretation of the Agreement by the United States Courts; (2) the Louisiana trial court, with the silent approval of the Louisiana Court of Appeal, decided in the *Texaco* case that the different Erath Agreements meant something else in the analagous situation, and (3) this decision was not reviewed by the Louisiana Supreme Court.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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Of Counsel.

Shreveport, Louisiana, January 13, 1964.

PROOF OF SERVICE

I, C. FORD CURRIER, one of the attorneys for Marathon Oil Company, a respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 22nd day of January, 1964, I served copies of the foregoing Brief in Opposition to Petition for a Writ of Certiorari, on the several parties to this action by mailing copies of said document, each in a duly addressed envelope, with first class postage prepaid, to the respective attorneys of record for said parties, all of whom reside within 500 miles from Shreveport, Louisiana, as follows:

1. Hunt Oil Company and Bodcaw Company through their attorneys of record, namely:

   Joseph C. LeSage, Jr.,
   304 Johnson Building,
   Shreveport, Louisiana.

   J. Ralph Goff,
   Masonic Building,
   Arcadia, Louisiana.

   James D. Heldt,
   1300 Mercantile Dallas Building,
   Dallas, Texas.

   Marlin Risinger, Jr.,
   1101 Beck Building,
   Shreveport, Louisiana

2. A. J. Hodges Industries, Inc., General American Oil Company of Texas, Mrs. Tom J. Moffett and

Mrs. Betty M. Harvin, Individually and as Natural Tutrix, through their attorneys of record, namely:

David E. Smitherman,
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3. M. H. Marr, R. A. Bristol and Marion Jean Bristol Wakefield through their attorney of record, namely:

Sumter Cousin,
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4. Socony Mobil Oil Company, Inc., through their attorney of record, namely:

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5. William H. Cook, Fred Simon, Mrs. Louise Weiss Bronner, Mrs. Barbara Ann Weiss Simon, and Mrs. Natalie H. Weiss through their attorneys of record, namely:

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6. F. H. Brown and P. G. LeGendre through their attorney of record, namely

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7. Mrs. Marie Amiss Smith and Mrs. Marilyn E. Watkins Baucum through their attorney of record, namely:

James G. Cowles,
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Shreveport, Louisiana.

This certificate and proof of service is made pursuant to Rule 33 of the Rules of the Supreme Court of the United States.

C. FORD CURRIER